11515

(16,241.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 149.

THE TIDE WATER OIL COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 1, 1897.

1 In the Court of Claims, Term 1895–1896.

THE TIDE WATER OIL COMPANY, for Themselves and for the Use of the Dodge and Bliss Box Company and for the Use of E. H. Barnes and Company,
vs.
THE UNITED STATES. } No. 17010.

I.—*Petition.*

Filed April 25, 1891.

To the honorable the judges of the Court of Claims:

The petition of the Tide Water Oil Company of the State of New Jersey respectfully showeth:

First. That your petitioner is and at the several dates hereinafter named was a corporation duly incorporated under the laws of the State of New Jersey, having a factory for carrying on its business at Bayonne, in said State.

Second. That your petitioner manufactured in the years 1889 and 1890 all the wooden cases which are referred to in the schedule hereto annexed, marked Exhibits A and B, which are made a part of this petition.

2 Third. That all the said cases were so manufactured by your petitioner at its factory at Bayonne, New Jersey, wholly out of materials the growth or production of a foreign country, on which duties amounting to thirty-five thousand nine hundred and eighty-three dollars and nine cents ($35,983.09) had been paid to the United States, to wit: out of shooks imported from Canada and iron rods imported from Europe.

Fourth. That all the shooks in said Exhibit A were imported from Canada by the Dodge and Bliss Box Company, a corporation organized under the laws of the State of New Jersey, through Delos Bliss, a member of said firm to whom the goods were consigned, and in whose name they were invoiced and entered by him in bond at Suspension Bridge for transportation to New York.

Fifth. That the invoice and bond so filed with the collector at Suspension Bridge was transmitted by him to the collector at the port of New York, where the said shooks were duly entered and the said duties thereon, amounting to twenty-two thousand two hundred and ninety-five dollars and twenty-five cents ($22,295.25), were duly paid to the collector of said port.

Sixth. That all the shooks in said Exhibit B were imported from Canada by E. H. Barnes Company by way of Rouse's Point, where they were entered and duty thereon duly paid, amounting to twelve thousand eight hundred and fifty dollars and sixteen cents ($12,850.16).

Seventh. That all the iron rods out of which the nails in the cases mentioned in Exhibit A and B were made were imported into the port of New York from Europe by Naylor & Co. and A. R.

3 Whitney & Co., both of New York, and were by them sold to the Brooklyn Wire Nail Company, a corporation doing

business in the city of Brooklyn, New York, which company manufactured the said rods into nails which were bought of them and used in the manufacture of the said cases by your petitioner.

Eighth. That "Exhibit C" contains the names of the parties by whom said rods were imported, the names of the vessels by which they were imported, the duties paid on their importation and entry at New York, to wit: eight hundred and thirty-seven dollars and sixty-eight cents ($837.68), and the number which was placed on the entries that were made of said rods.

Ninth. That said Brooklyn Wire Nail Company furnished to your petitioner a certificate of manufacture of nails out of said importations of wire rods, which said certificate your petitioner duly filed with the collector in the drawback division of the custom-house in accordance with the regulations in that respect required, and on entries for exportation the said collector duly compared and checked the amount credited the said exporters on the certificates, with the amount of wire rods stated on said entries.

Tenth. That section 3019 of the Revised Statutes of the United States provides:

"There shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid, when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury. Ten per centum on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks respectively."

4 Eleventh. That the general regulations of the Secretary of the Treasury relating to the exportation of merchandise, article 819, published by the Government in 1874, provided a form and time of entry of manufactured articles for exportation with benefit of drawback and an oath or affirmation of the exporter and of the proprietor and foreman of the manufactory in which articles manufactured for exportation were manufactured and provides for proceedings and bond for shipment as in ordinary cases of withdrawal for exportation.

Twelfth. That article 821 of said regulations provided the form of a certificate on exportation articles to be given by the collector to the order of the person exporting such manufactures, showing amount of drawback to be paid to the exporter's order.

Thirteenth. That your petitioner, desiring to export and to have exported the cases set forth in Exhibits A and B for the benefit of drawback entered at the office of the collector of customs at the port of New York for the benefit of drawback in their corporate name the cases set forth in Exhibit D hereto annexed, which forms a part of this petition.

Fourteenth. That said Exhibit D contains the numbers placed on the entries for exportation at the custom-house and the dates at which the entries were made and the number of cases exported, and the names of the vessels by which they were exported.

Fifteenth. That your petitioner made a contract of sale subject to

the limitations hereinafter expressed, to the various persons named in Exhibit E, hereto attached, which is hereby made a part of this petition, of the cases which are in said Exhibit E, set forth in connection with their names thereon.

5 Sixteenth. That the cases set forth in Exhibit E are all of the cases which are set forth in Exhibits A and B except those which are set forth in Exhibit D.

Seventeenth. That by said contract your petitioner sold said cases for exportation and the buyers agreed to enter them for exportation for the benefit of drawback, for the benefit of your petitioner, and your petitioner in said sale reserved the right to have said cases entered for the benefit of drawback that had been paid on the materials therein, and reserved the right to have and receive the money that should be obtained therefor.

Eighteenth. That the said buyers, the parties named in Exhibit E, in pursuance of their agreement, duly entered for exportation and benefit of drawback, the respective cases with which their names are connected on said Exhibit E, which said exhibit contains the custom-house number on the entry, and contains the number of cases entered and the dates of their entries and the names of the vessels by which they were exported, and in conformity to said reservation the said buyers who are in Exhibit E named, each and all of them, placed on the face of said entries an order to the collector to "pay to the Tide Water Oil Co. the drawback due on this entry," which entry with said order thereon was accepted by said collector.

Nineteenth. That your petitioner and the various parties named in said Exhibit E, who entered some of said merchandise for exportation in their own names for the benefit of your petitioner, complied in all respects with the law and the regulations of the Secretary of the Treasury and collector requisite to entitle your petitioner to receive as drawback the amounts of duty paid on the foreign materials contained in the cases set forth in said Exhibits D and E, but

6 the collector refused to liquidate the said exportation entries or to perform the duties devolved upon him by the law and regulations, and refused to give to your petitioner or to any one the certificates by said regulations prescribed for the payment of drawback of duties on said cases or to pay them or their order said drawback, or any part thereof, and the said cases referred to in said Exhibits D and E were duly shipped and laden on board of the said vessels named in said exhibits at or about the dates therein stated, as by the bills of lading duly issued therefor will appear, and they were exported and carried by said vessels from New York to foreign ports and there discharged and delivered, and no part thereof has been at any time relanded in any port or place within the limits of the United States.

Twentieth. That the landing certificates for said good- in foreign ports under the seal of the American consel in said ports have been returned and placed on file in the custom-house, and the bonds given on exportation have been cancelled.

Twenty-first. That the said vessels cleared at the custom-house, New York, for foreign ports at or after the several dates in said

Exhibits D and E stated, and that if the said collector had complied with the law and regulations and issued to your petitioner in due course his certificate for the payment of said drawback of duties the said sum of $35,983.09, after deducting the ten per cent. by the said statute to be retained for the use of the United States, would have been due and payable to your petitioner within thirty days from the date of such clearance, and the United States by reason of the premises are justly indebted to your petitioner in the said sum of $35,983.09 with interest from the 11th day of October, 1889.

7 Twenty-second. That due application has been made to the Secretary of the Treasury for the allowance by him of the claim against the United States herein set forth and without success, and his decision in writing upon such application denies and rejects the same.

Twenty-third. That your petitioner heretofore agreed with the Dodge & Bliss Box Company that all drawbacks which should be recovered on the cases specified in Exhibit A should be for the use and benefit of said Dodge & Bliss Box Company, and also heretofore agreed with the said E. H. Barnes Company that all drawbacks which should be recovered in the cases specified in Exhibit B should be for the use and benefit of the said E. H. Barnes Company.

Twenty-fourth. And your petitioners further state that they are all citizens of the United States, and have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted or given encouragement to the rebellion against the said Government, and that no person or persons other than your petitioners and the Dodge & Bliss Box Company and the E. H. Barnes Company are owners of the claim herein set forth or interested therein.

Wherefore, your petitioners demand judgment against the United States for the sum of thirty-five thousand nine hundred and eighty-three dollars and nine cents ($35,983.09), with interest thereon from the 1st day of September, 1889.

EDWIN B. SMITH,
No. 120 *Broadway, New York City,*
Solicitor for the Petitioners.

EXHIBIT A.

Entry No.	Cases.	Vessels.	Date of entry.
6,828	6,000	Akbar	Aug. 2, 1889.
9,638	1,100	Daisy	Nov. 9, 1889.
5,181	300	Baldier	July 2, 1890.
10,270	200	Somar	Dec. 17, 1890.
10,466	200	Alvena	Dec. 22, 1890.
10,618	1,500	Rosa Madre	Dec. 23, 1890.
5,208	275	D. A. Brayton	July 2, 1890.
7,297	58,942	Ben. Avon	Aug. 19, 1889.
331	49,820	Norwhal	Jan. 14, 1890.
817	38,450	Tjermai	Feb. 1, 1890.
1,219	13,749	Mabel Taylor	Feb. 14, 1890.
4,210	27,680	Asia	May 29, 1890.
6,918	15,000	Mary L. Cushing	Aug. 29, 1890.
7,029	15,000	Holt Hill	Sept. 4, 1890.
7,328	15,000	Siren	Sept. 13, 1890.
7,866	15,000	Glencaird	Oct. 1, 1890.
8,460	15,000	Palgrave	Oct. 17, 1890.
8,910	58,043	Batavia	Nov. 1, 1890.
10,241	300	Bremerhaven	Dec. 13, 1890.
9,796	42,980	Albano	Nov. 15, 1889.
7,909	15,000	Crofton Hall	Oct. 1, 1890.
10,659	24,053	Fannie Schofield	Dec. 30, 1890.
10,523	23,100	R. Morrow	Dec. 23, 1890.
7,643	500	Dryad	Aug. 29, 1889.
8,903	500	Endora	Oct. 15, 1889.
8,902	3,000	Essex	Oct. 15, 1889.
10,014	5,000	Elinor Vernon	Nov. 21, 1889.
10,278	10,000	Mt. Carmel	Nov. 30, 1889.
11,226	3,000	Alice	Dec. 28, 1889.
154	500	Galatea	Jan. 8, 1890.
975	1,000	C. Tobias	Feb. 3, 1890.
4,590	25,500	Sarah S. Ridgway	June 12, 1890.
4,888	3,000	Mary S. Ames	June 21, 1890.
5,058	5,000	Selkirkshire	June 27, 1890.
9,502	6,000	Charger	Nov. 20, 1890.
8,520	300	Finance	Oct. 5, 1889.
5,405	646	Parneuse	July 11, 1890.
10,155	51	Vigilanca	Dec. 10, 1890.

10,607	1,210	Lisboneuse	Dec. 29, 1890.
10,558	186	Cyril	Dec. 22, 1890.
8,328	17,586	Mary C. Hale	Sept. 24, 1889

Exhibit A—Continued.

Entry No.	Cases.	Vessels.	Date of entry.
9,598	2,984	J. H. Cottrell	Nov. 8, 1889.
10,802	300	H. A. Hartman	Dec. 17, 1889.
10,717	500	Viscaya	Dec. 13, 1889.
156	12,000	Leonora	Jan. 8, 1890.
3,374	9,000	E. A. Baylis	May 2, 1890.
4,457	14,320	Mary C. Hale	June 6, 1890.
1,108	18,813	Mary C. Hale	Feb. 11, 1890.
5,361	2,000	Mexico	July 10, 1890.
5,374	100	Ciudad Condal	July 10, 1890.
6,426	12,000	Ceres	Aug. 14, 1890.
10,192	1,000	Mexico	Dec. 12, 1890.
10,311	1,000	Mexico	Dec. 16, 1890.
10,585	2,200	Mexico	Dec. 26, 1890.
8,790	62,511	Blair Athol	Oct. 9, 1889.
9,797	15,375	Gulf Stream	Nov. 15, 1889.
332	31,766	Pilgrim	Jan. 14, 1890.
8,235	100	C/o Alexandria	Sept. 20, 1889.
10,071	16,266	Chinampass	Nov. 22, 1889.
10,759	1,500	Coban	Dec. 16, 1889.
1,479	700	Moruca	Feb. 24, 1889.
5,010	1,000	Alps	June 25, 1890.
10,181	1,000	Alps	Dec. 13, 1890.
10,288	46,278	Landseer	Nov. 30, 1889.
3,375	6,000	Columbia	May 2, 1890.
4,841	48,029	Rajore	June 20, 1890.
9,332	29,757	Bangalore	Nov. 14, 1890.
188	300	Glenesslim	Jan. 9, 1890.
5,056	100	Thyalia	June 27, 1890.
4,973	500	Alps	June 25, 1890.
155	1,000	E. R. Smith	Jan. 8, 1890.
687	1,000	Cuba	Feb. 3, 1890.
1,218	16,800	Normandy	Feb. 14, 1890.
5,103	100	St. Kilda	June 28, 1890.
1,574	40,200	M. Slagnomo	Feb. 27, 1890.
5,923	15,000	Jno. McDonald	July 29, 1890.
8,724	51,000	Timandria	Oct. 25, 1890.

EXHIBIT B.

Entry No.	Cases.	Vessels.	Date of entry.
6,890	500	Hattie N. Bangs	Aug. 5, 1889.
6,889	500	A. R. Storer	Aug. 5, 1889.
7,608	500	M. E. Russell	Aug. 29, 1889.
7,969	500	Jupiter	Sept. 10, 1889.
8,310	500	N. B. Morris	Sept. 24, 1889.
8,651	500	Gleneida	Oct. 5, 1889.
8,960	5,000	Alborga	Oct. 17, 1889.
8,939	500	E. O. Clarke	Oct. 9, 1889.
10,034	1,000	G. S. Penry	Nov. 16, 1889.
10,275	1,000	Mark Twain	Nov. 30, 1889.
7,062	5,100	Zeno	Aug. 9, 1889.
7,145	28,548	Nanpactus	Aug. 14, 1889.
8,080	36,621	Mary L. Cushing	Sept. 17, 1889.
8,807	68,205	Lord Dufferin	Oct. 10, 1889.
8,867	1,000	Ocean	Oct. 14, 1889.
9,557	60,500	Argo	Nov. 7, 1889.
6,998	1,524	Cearense	Aug. 8, 1889.
8,234	700	Basil	Sept. 20, 1889.
8,329	965	Augustine	Sept. 24, 1889.
8,763	1,180	Portuense	Oct. 9, 1889.
9,110	770	Clements	Oct. 23, 1889.
9,329	1,000	Lisboneuse	Oct. 30, 1889.
10,597	1,060	Portuense	Dec. 10, 1889.
10,924	150	Cyril	Dec. 20, 1889.
11,012	200	Cyril	Dec. 23, 1889.
7,587	250	Gronsover	Aug. 29, 1889.
8,041	500	Vesuvius	Sept. 4, 1889.
7,643	3,000	Dryad	Aug. 29, 1889.
7,732	5,000	Centennial	Sept. 4, 1889.
10,278	1,000	Mt. Carmel	Nov. 30, 1889.
10,700	300	Mt. Carmel	Dec. 12, 1889.
10,746	100	Mt. Carmel	Dec. 14, 1889.
7,793	33,884	Royal Alfred	Sept. 6, 1889.
9,176	64,900	Glendon	Oct. 24, 1889.
9,797	25,104	Gulf Stream	Nov. 15, 1889.
8,014	5,000	Sch. Lochner	Sept. 9, 1889.
8,052	200	Energy	Sept. 16, 1889.
8,457	950	Nicanor	Sept. 30, 1889.
8,936	100	Frank Stafford	Oct. 16, 1889.
11			
8,990	100	Sultana	Oct. 18, 1889.
10,171	1,200	Waterside	Oct. 27, 1889.

Exhibit B—Continued.

Entry No.	Cases.	Vessels.	Date of entry.
10,277	850	Hattie H	Nov. 30, 1889.
10,996	150	Albany	Dec. 20, 1889.
9,661	1,575	Gunheld	Nov. 9, 1889.
11,077	2,000	Vega	Nov. 18, 1889.
7,971	2,000	Baltimore	Sept. 11, 1889.
8,249	1,200	Morgan's Line Mexico	Sept. 20, 1889.
8,327	500	Baltimore	Sept. 24, 1889.
8,521	100	Saratoga	Oct. 2, 1889.
9,427	1,000	Baltimore	Nov. 1, 1889.
9,913	4,954	Mexico	Nov. 7, 1889.
10,100	2,000	Mexico	Nov. 25, 1889.
10,465	14,578	Tangier	Dec. 6, 1889.
10,802	3,000	Jno. Pierce	Dec. 17, 1889.
8,791	45,200	British Peer	Oct. 9, 1889.
9,191	70,608	St. John	Oct. 24, 1889.
10,170	44,000	Lucania	Nov. 27, 1889.
10,503	66,103	Hileria	Dec. 7, 1889.
10,923	37,189	Columbus	Dec. 20, 1889.
9,111	250	Mina Belle	Oct. 23, 1889.
8,405	1,000	Muriel	Sept. 27, 1889.
9,968	1,000	Belmont	Nov. 20, 1889.
10,196	2,000	Stadaconia	Nov. 27, 1889.
10,502	31,630	Suffolk	Dec. 7, 1889.
11,078	500	Isabella Balcon	Dec. 24, 1889.
9,273	210	Vornorto	Oct. 28, 1889.

12 EXHIBIT C.

Wire Rods Imported by Naylor & Co.

Entry No.	Vessel.	Rate of duty paid.	When imported.
27,131	Bk. Lewis Smith	45%	Feb. 20, 1889.
6,458	S/S Wm. Douglass	"	Jan. 14, "
106,859	S/O Nebraska	"	July 15, "
91,317	" Indiana	"	June 12, "

Wire Rods Imported by A. R. Whitney & Co.

Entry No.	Vessel.	Rate of duty paid.	When imported.
156,628	Noordland	45%	Oct. 10, 1889.
178,835	"	"	Nov. 15, "
190,113	S/O Pennsylvania	"	Dec. 4, "

Total duties paid by Naylor & Co. and Whitney & Co. on rods that went into nails in cases in Exhibits A and B.. $837 68

13 EXHIBIT D.

Entry No.	Cases.	Vessels.	Date of entry
8,328	17,586	Mary C. Hale	Sept. 24, 1889.
9,598	2,984	J. H. Cottrele	Nov. 8, 1889.
10,802	300	H. A. Hartman	Dec. 17, 1889.
10,717	500	Viscaya	Dec. 13, 1889.
156	12,000	Leonora	Jan. 8, 1890.
3,374	9,000	E. A. Baylis	May 2, 1890.
4,457	14,320	Mary C. Hale	June 6, 1890.
1,108	18,813	Mary C. Hale	Feb. 11, 1890.
5,361	2,000	Mexico	July 10, 1890.
5,374	100	Ciudad Condal	July 10, 1890.
6,426	12,000	Ceres	Aug. 14, 1890.
10,192	1,000	Mexico	Dec. 12, 1890.
10,311	1,000	Mexico	Dec. 16, 1890.
10,585	2,200	Mexico	Dec. 26, 1890.
7,971	2,000	Baltimore	Sept. 11, 1889.
8,249	1,200	Morgan's Line Mexico	Sept. 20, 1889.
8,327	500	Baltimore	Sept. 24, 1889.
8,521	100	Saratoga	Oct. 2, 1889.
9,427	1,000	Baltimore	Nov. 1, 1889.
9,913	4,954	Mexico	Nov. 7, 1889.
10,100	2,000	Mexico	Nov. 25, 1889.
10,465	14,578	Tangier	Dec. 6, 1889.
10,802	3,000	Jno. Pierce	Dec. 17, 1889.

14 EXHIBIT E.

Entry No.	Cases.	Vessels.	Date of entry.	Exporter.
6,828	6,000	Akbar	Aug. 2, 1889.	Coombs, Crosby & Eddy.
9,638	1,100	Daisy	Nov. 9, 1889.	"
5,181	300	Baldier	July 2, 1890.	"
10,270	200	Somar	Dec. 17, 1890.	"
10,466	200	Alvena	Dec. 22, 1890.	"
10,618	1,500	Rosa Madre	Dec. 23, 1890.	"
5,208	275	D. A. Brayton	July 2, 1890.	"
7,297	58,942	Ben. Avon	Aug. 19, 1889.	H. Stursberg & Co.
331	49,820	Norwhal	Jan. 14, 1890.	"
817	38,450	Tjermai	Feb. 1, 1890.	"
1,219	13,749	Mabel Taylor	Feb. 14, 1890.	"
4,210	27,680	Asia	May 29, 1890.	"
6,918	15,000	Mary L. Cushing	Aug. 29, 1890.	"
7,029	15,000	Holt Hill	Sept. 4, 1890.	"
7,328	15,000	Siren	Sept. 13, 1890.	"
7,866	15,000	Glencaird	Oct. 1, 1890.	"
15				
8,460	15,000	Palgrave	Oct. 17, 1890.	"
8,910	58,043	Batavia	Nov. 1, 1890.	"
10,241	300	Bremerhaven	Dec. 13, 1890.	"
9,796	42,980	Albano	Nov. 15, 1889.	Busk & Jevons.
7,909	15,000	Crofton Hall	Oct. 1, 1890.	"
10,659	24,053	Fannie Schofield	Dec. 30, 1890.	"
10,523	23,100	R. Morrow	Dec. 23, 1890.	"
7,643	500	Dryad	Aug. 29, 1889.	Arnold, Cheney & Co.
8,903	500	Endora	Oct. 15, 1889.	"
8,902	3,000	Essex	Oct. 15, 1889.	"
10,014	5,000	Elinor Vernon	Nov. 21, 1889.	"
10,278	10,000	Mt. Carmel	Nov. 30, 1889.	"
11,226	3,000	Alice	Dec. 28, 1889.	"
154	500	Galatea	Jan. 8, 1890.	"
975	1,000	C. Tobias	Feb. 3, 1890.	"
4,590	25,500	Sarah S. Ridgway	June 12, 1890.	"
4,888	3,000	Mary S. Ames	June 21, 1890.	"
5,058	5,000	Selkirkshire	June 27, 1890.	"
9,502	6,000	Charger	Nov. 20, 1890.	"
8,520	300	Finance	Oct. 5, 1889.	Shipton Green.
5,405	646	Parneuse	July 11, 1890.	"
10,155	51	Vigilanca	Dec. 10, 1890.	"
10,607	1,210	Lisboneuse	Dec. 29, 1890.	"
10,558	186	Cyril	Dec. 22, 1890.	"
16				
8,790	62,511	Blair Athol	Oct. 9, 1889.	Carter, Hawley & Co.
9,797	15,375	Gulf Stream	Nov. 15, 1889.	"
332	31,766	Pilgrim	Jan. 14, 1890.	"
8,235	100	C/o Alexandria	Sept. 20, 1889.	Ward & Huntington.
10,071	16,266	Chinampass	Nov. 22, 1889.	Whitloff, Marsely & Co.
10,759	1,500	Coban	Dec. 16, 1889.	Middleton & Co.
1,479	700	Moruca	Feb. 24, 1889.	"
5,010	1,000	Alps	June 25, 1890.	"
10,181	1,000	Alps	Dec. 13, 1890.	"
10,288	46,278	Landseer	Nov. 30, 1889.	Russell & Co.
3,375	6,000	Columbia	May 2, 1890.	"
4,841	48,029	Rajore	June 20, 1890.	"
9,332	29,757	Bangalore	Nov. 14, 1890.	"

Exhibit E—Continued.

Entry No.	Cases.	Vessels.	Date of entry.	Exporter.
188	300	Glenesslim	Jan. 9, 1890	H. W. Peabody & Co.
5,056	100	Thyalia	June 27, 1890	"
4,973	500	Alps	June 25, 1890	F. G. Chaloner & Co.
155	1,000	E. R. Smith	Jan. 8, 1890	J. B. Woodward.
17				
687	1,000	Cuba	Feb. 3, 1890	S. Samper & Co.
1,218	16,800	Normandy	Feb. 14, 1890	Carlton & Moffatt.
5,103	100	St. Kilda	June 28, 1890	W. R. Grace & Co.
1,574	40,200	M. Slagnomo	Feb. 27, 1890	China and Japan T. Co.
5,923	15,000	John McDonald	July 29, 1890	"
8,724	51,000	Timandria	Oct. 25, 1890	Wm. Sphwikendieck.
6,890	500	Hattie N. Bangs	August 5, 1889	J. B. Woodward.
6,889	500	A. R. Storer	August 5, 1889	"
7,608	500	M. E. Russell	August 29, 1889	"
7,969	500	Jupiter	Sept. 10, 1889	"
8,310	500	N. B. Morris	Sept. 24, 1889	"
8,651	500	Gleneida	Oct. 5, 1889	"
8,960	5,000	Alborga	Oct. 17, 1889	"
8,939	500	E. O. Clarke	Oct. 9, 1889	"
10,034	1,000	G. S. Penry	Nov. 16, 1889	"
10,275	1,000	Mark Twain	Nov. 30, 1889	"
7,062	5,100	Zeno	August 9, 1889	L. F. Dufoureq.
7,145	28,548	Nanpactus	August 14, 1889	H. Stursburg & Co.
8,080	36,621	Mary L. Cushing	Sept. 17, 1889	"
8,807	68,205	Lord Dufferin	Oct. 10, 1889	"
8,867	1,000	Ocean	Oct. 14, 1889	"
9,557	60,500	Argo	Nov. 7, 1889	"
6,998	1,524	Cearense	August 8, 1889	Shipton Green.
8,234	700	Basil	Sept. 20, 1889	"
18				
8,329	965	Augustine	Sept. 24, 1889	Shipton Green.
8,763	1,180	Portuense	Oct. 9, 1889	"
9,110	770	Clements	Oct. 23, 1889	"
9,329	1,000	Lisboneuse	Oct. 30, 1889	"
10,597	1,060	Portuense	Dec. 10, 1889	"
10,924	150	Cyril	Dec. 20, 1889	"
11,012	200	Cyril	Dec. 23, 1889	"
7,587	250	Gronsover	August 29, 1889	Corner Bros. & Co.
8,041	500	Vesuvius	Sept. 4, 1889	"
7,643	3,000	Dryad	August 29, 1889	Arnold, Cheney & Co.
7,732	5,000	Centennial	Sept. 4, 1889	"
10,278	1,000	Mt. Carmel	Nov. 30, 1889	"
10,700	300	Mt. Carmel	Dec. 12, 1889	"
10,746	100	Mt. Carmel	Dec. 14, 1889	"
7,793	33,884	Royal Alfred	Sept. 6, 1889	Carter, Hawley & Co.
9,176	64,900	Glendon	Oct. 24, 1889	"
9,797	25,104	Gulf Stream	Nov. 15, 1889	"
19				
8,014	5,000	Sch. Lochner	Sept. 9, 1889	Coombs, Crosby & Eddy.
8,052	200	Energy	Sept. 16, 1889	"
8,457	950	Nicanor	Sept. 30, 1889	"
8,936	100	Frank Stafford	Oct. 16, 1889	"
8,990	100	Sultana	Oct. 18, 1889	"
10,171	1,200	Waterside	Oct. 27, 1889	"
10,277	850	Hattie H.	Nov. 30, 1889	"

Exhibit E—Continued.

Entry No.	Cases.	Vessels.	Date of entry.	Exporter.
10,996	150	Albany	Dec. 20, 1889.	Coombs, Crosby & Eddy.
9,661	1,575	Gunheld	Nov. 9, 1889.	"
11,077	2,000	Vega	Nov. 18, 1889.	"
8,791	45,200	British Peer	Oct. 8, 1889.	Russell & Co.
9,191	70,608	St. John	Oct. 24, 1889.	China and Japan T. Co.
10,170	44,000	Lucania	Nov. 27, 1889.	"
10,503	66,103	Hileria	Dec. 7, 1889.	"
10,923	37,189	Columbus	Dec. 20, 1889.	"
9,111	250	Mina Belle	Oct. 23, 1889.	Mosle Bros.
8,405	1,000	Muriel	Sept. 27, 1889.	Middleton & Co.
9,968	1,000	Belmont	Nov. 20, 1889.	"
10,196	2,000	Stadaconia	Nov. 27, 1889.	W. R. Grace & Co.
10,502	31,630	Suffolk	Dec. 7, 1889.	Busk & Jevons.
11,078	500	Isabella Balcon	Dec. 24, 1889.	J. F. Maury.
9,273	210	Vornorto	Oct. 28, 1889.	C. Henenger.

20 STATE OF NEW YORK, *Southern District of New York,* } ss:

Josiah Lombard, of New York city, being duly sworn, says that he is vice-president of the Tide Water Oil Company; that no assignment or transfer of the claim set forth in the above petition, or of any part thereof or any interest therein, has been made at any time.

That said petitioners are justly entitled to the amount in said petition claimed from the United States after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true, and further deponent saith not.

JOSIAH LOMBARD,
Vice-President Tide Water Oil Co.

Sworn to before me this 18th day of April, 1891.

SAMUEL H. LYMAN,
[SEAL.] *U. S. Commissioner.*

21 II.—*Traverse. Filed May* 23, 1891.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney General.

22 III.—*Stipulation of Counsel as to Amendment of Petition and Allowance of Same.*

Filed December 8, 1891.

It is hereby stipulated by and between the attorneys for the respective parties hereto that the petition filed herein be amended by striking out paragraphs eleven and twelve thereof and substituting in lieu thereof the following:

"Eleventh. That the general regulations of the Secretary of the Treasury, promulgated July 4, 1884, provided for the payment of drawback upon the exportation of imported materials, the time within which an entry for the purpose of obtaining said drawback must be made and the form thereof, the form of oath or affirmation required of the exporter and of the proprietor and foreman of the manufactory in which the articles to be exported were manufactured, and for the proceeding and bond necessary in cases of withdrawal from warehouse. (Arts. 966, 967, 968.)

Twelfth. That article 969 of said regulations provided the form of a certificate on exportation articles to be given by the collector to the order of the person exporting such manufactures, showing amount of drawback to be paid to the exporter's order."

New York, October —, 1891.

STANLEY, CLARKE & SMITH,
EDWIN B. SMITH,
Attorney- for Petitioner.
JOHN B. COTTON,
Assist. Att'y General, for the United States.

Filed December 8, 1891.

Allowed.
WILLIAM A. RICHARDSON,
Chief Justice.

23 IV.—*Findings of Fact and Conclusion of Law.*

Filed January 13, 1896.

This case having been heard before the Court of Claims, the court, on the evidence and after considering the argument of counsel on both sides, makes the following—

Findings of Fact.

I.

During the years 1889, 1890, and 1891 the claimant was a corporation existing under the laws of New Jersey, organized in 1888, and having a factory for carrying on its business at Bayonne, in that State.

II.

In 1889 and 1890 the claimant imported from Canada box shooks, and from Europe steel rods, upon which importation duties amounting in the aggregate to $39,636.20 were paid to the United States, of which sum $837.68 was paid on the importation of the steel rods.

III.

The box shooks imported as set forth in finding II were manufactured in Canada from boards, first being planed and then cut into required lengths and widths, intended to be substantially correct for making into boxes without further labor than nailing the shooks together. They were then tied up in bundles of sides, of ends, of bottoms, and of tops of from fifteen to twenty-five in a bundle for convenience in handling and shipping.

IV.

The shooks so manufactured in Canada and imported into the United States as aforesaid were, at the claimant's factory in Bayonne, N. J., constructed into the boxes or cases set forth in Exhibit E to the petition herein, by nailing the same together with nails manufactured in the United States out of the steel rods imported as aforesaid, and by trimming when defective in length or width to make the boxes or cases without projecting parts, *i. e.:*

The shooks were imported in bundles of ends, of sides, of tops, and of bottoms, each part coming in bundles separated from
24 the bundles of other parts. From one of these bundles of ends the ends of a box are selected, to which the sides taken indiscriminately from any bundle of sides are nailed by nailing machines; then the sides are trimmed off even with the ends by saws; then by bottoming machines bottoms taken from any bundle of bottoms are nailed on; then the bottoms are trimmed even with the sides by saws; then, after being filled with cans, the tops are nailed on; and then the boxes or cases are ready for exportation.

The cost of the labor expended in the United States in the necessary handling and in the nailing and trimming of the boxes as aforesaid was equal to about one-tenth of the value of the boxes.

The principal part of the labor performed in trimming the boxes was occasioned by the Canadian manufacturer not cutting the shooks into the required lengths and widths for use in making the boxes, and for which the claimants sometimes charged the cost of such trimming to the Canadian manufacturer.

V.

The boxes or cases made as aforesaid were exported from the United States to foreign countries in conformity with the regulations of the Treasury Department then in force, to wit, Treasury regulations of 1884, sections 966, 967, and 968, hereinafter set out, relating to drawbacks upon the exportation of articles wholly manufactured of imported materials, and cases so manufactured were entered for such drawback upon the exportation thereof.

VI.

For about four years prior to July 31, 1889, the Treasury Department had allowed and paid a drawback upon the exportation of boxes made from imported shooks fastened together with nails made from imported steel rods as aforesaid; and the Treasury Department was requested to pay the drawback on the exportation of the boxes or cases set forth in Exhibit E to the petition, but refused for the reasons set forth in the following communication addressed to the collector of customs at New York:

TREASURY DEPARTMENT, *July* 31, 1889.

SIR: Referring to department letter of March 2, 1885, addressed to the then collector at your port, in which a rate of drawback was established on shooks used in the manufacture of boxes, you are informed that the department has recently given the matter further consideration, and it appears upon investigation that the boxes are made complete in Canada, with the exception of nailing, and that the only manufacture which they receive in this country consists in their thus being nailed together, which part of the labor is omitted to be done in Canada merely for convenience in shipping to the United States.

The boxes appear to have been manufactured complete abroad, and in the condition imported resemble the finished furniture imported in pieces which the department has heretofore held to be dutiable at the rate applicable to finished furniture. (See Synopsis, 4272.)

The simple act of nailing them together is not, in the opinion of the department, a manufacture within the meaning of section 3019, Revised Statutes, and the authority to allow drawback thereon is hereby revoked.

You will accordingly receive no further entries for drawback in such cases.

Respectfully, yours, GEORGE C. TICHNOR,
Assistant Secretary.

Collector of customs, New York.

25 VII.

The Treasury regulations of 1884 referred to in finding V, viz., articles 966, 967, and 968, are as follows:

ART. 966. On articles wholly manufactured of imported materials on which duties have been paid, a drawback is to be allowed, on exportation, equal in amount to the duty paid on such imported materials, less 10 per cent. thereof, except on exportations of refined sugars, in which case the legal retention is 1 per cent.

ART. 967. The entry in such cases will be as follows, and must be filed with the collector at least six hours before putting or lading any of the merchandise on board the vessel or other conveyance for exportation:

(Form No. 282.)

Entry of Manufactured Articles for Exportation with Benefit of Drawback.

Entry of ——, manufactured in the United States from —— of foreign growth and production, intended to be exported by —— —— on board the ——, —— ——, master, for ——, with benefit of drawback, under the provisions of section 3019 of the Revised Statutes of the United States:

Marks and numbers.	Number and description of articles.	Quantity.	Value.	By whom manufactured.	Where deposited.

Materials Entering into the Manufacture of the Above Articles.

Description of material.	By whom imported.	Name of vessel.	When imported.	Where imported.	Whence imported.	Quantity.	Value.	Rate of duty paid.

—— ——, *Exporter.*

Oath or Affirmation of Exporter.

I, —— ——, do solemnly, sincerely, and truly —— that the —— described in the annexed entry, now to be laden on board ——, —— ——, master, —— truly intended to be exported to ——, and not to be brought back or reladen within the limits of the United States. I further —— that the said ——, according to the best of my knowledge and belief, —— wholly manufactured on ——, the growth and production of a foreign country, imported as in said entry stated; that the duties chargeable thereon by law on importation have been paid, without any allowance or deduction for damage or other cause, except (here state if any allowance was made, and what), and that no part of such duties have been heretofore refunded by way of drawback or otherwise.

—— ——.

—— before me this — day of ——, 18—.

—— ——.

The proprietor and the foreman of the manufactory in which the articles were manufactured must make oath, to be indorsed upon or securely attached to the entry, in the following form:

We, —— ——, proprietor, and —— ——, foreman of the ——, do severally, solemnly, sincerely, and truly —— that the —— described

in the within (or annexed) entry was manufactured at the ——, wholly from ——, of the growth or production of a foreign country, imported, and on which duties have been paid, as in said entry stated, to the best of our knowledge and belief.

—— ——.

—— before me this — day of ——, 18—.

—— ——.

26 ART. 968. Like proceedings will be had as in cases of withdrawal from warehouse for exportation, and bond executed in the form following:

(Form No. 283.)

Bond for Exportation of Manufactured Articles with Benefit of Drawback.

Know all men by these presents that we, —— ——, of ——, as principals, and —— ——, of ——, as sureties, are held and firmly bound to the United States of America in the sum of — dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, by these presents.

Witness our hands and seals this — day of ——, in the year one thousand eight hundred and ——.

Whereas the above-bounden —— —— hath laden on board the ——, —— ——, master, for ——, to be exported with benefit of drawback under the provisions of section 3019 of the Revised Statutes of the United States, certain manufactured articles, consisting of—

Marks.	Numbers.	Number and description of articles.	Quantity.	Value.

manufactured in the United States from ——, of foreign growth and production, on which the legal duties on importation have been paid, as set forth in an export entry of domestic manufactures, and papers thereto annexed, lodged with the collector of the port of —— by said ——, and bearing the same number herewith; which —— is found by the inspector of the customs at said port of —— to be in quantity, ——:

Now, therefore, the condition of this obligation is, that if the aforesaid manufactured articles, or any part thereof, be not relanded in any port or place within the limits of the United States (shipwreck or other unavoidable accident excepted), and if the certificates and other proofs required by law and regulations of the delivery of the same at the aforesaid port of ——, or any other port or place without the limits of the United States, shall be produced at this

office within — from the date hereof, then this obligation to be void; or otherwise, to remain in full force.

—— ——. [SEAL.]
—— ——. [SEAL.]

Signed, sealed, and delivered in presence of—
—— ——.

From the foregoing findings of fact the court finds the ultimate fact, so far as it is a question of fact, that the boxes or cases so exported were not manufactured in the United States.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is not entitled to recover and the petition is dismissed.

V.—*Opinion of the Court.*

PEELLE, *J.*, delivered the opinion of the court:

This action is to recover an allowance for a drawback on the exportation of boxes, alleged to have been wholly manufactured of materials imported, on which duties were paid, *i. e.*, of box shooks imported from Canada and of nails manufactured in the United States out of steel rods imported from Europe.

The claimant bases its right to recover under the act — August 5, 1861, section 4 (12 Stat. L., 292), Revised Statutes, section 3019, which reads:

There shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury. Ten per centum on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks, respectively.

27 The shooks were imported under the tariff act — March 3, 1883 (22 Stat. L., 491–502), which reads:

SEC. 2502. There shall be levied, collected, and paid upon all articles imported from foreign countries, and mentioned in the schedules herein contained, the rates of duty which are, by the schedules, respectively prescribed, namely:

* * * * * * *

Casks and barrels, empty, sugar-box shooks, and packing boxes, and packing-box shooks, of wood, not specially enumerated or provided for in this act, 30 per centum ad valorem.

And the same rate of duty is retained by the act — October 1, 1890, par. 228 (26 Stat. L., 583), and 1st Suppt. to R. S., 2d ed., 828.

The claimant's contention is that the boxes were wholly manufactured of materials imported, on which duties were paid, and that

under the section of the statute quoted it is entitled to an allowance for a drawback equal in amount to the duty so paid less 10 per cent. thereof.

The defendants' contention is that the boxes were not manufactured in the United States, for the reason that the shooks were complete boxes of foreign manufacture when imported, with the exception of nailing the parts together, and that the shooks were not "material" within the meaning of the statute.

The question presented is, therefore, as to whether the boxes exported were, in the language of the statute, "articles wholly manufactured of materials imported, etc."

There is no controversy, as we understand, but that the words "in the United States" should be read in the statute so that the section will read, "There shall be allowed on all articles wholly manufactured," in the United States, "of materials imported, etc."

And this was the construction of the section given by the Secretary of the Treasury in the regulations and forms prescribed by him for the execution of the same, as will be seen by an examination of finding VII.

The word "articles" appears in section 2502 (*supra*) and is sufficiently broad and comprehensive to include every item named specifically or in general terms in the several schedules thereunder. And the same is true as to the word in Revised Statutes, section 2503, concerning articles exempt from duty.

In speaking of the word "articles" as used in section 2502, etc., in the case of Junge *v.* Hedden (146 U. S., 233–239), the court said: "We agree with the circuit court that the word must be taken comprehensively, and cannot be restricted to articles put in condition for final use, but embraces as well things manufactured only in part, or not at all."

But will that construction apply to the word concerning exports for the benefit of drawback, as used in section 3019? We think not, and for the reason that the word in this section is qualified or restricted to "articles wholly manufactured," in the United States, "of materials imported, on which duties have been paid;" if so, then such articles are complete in their manufacture—in condition for final use—and this differentiates the meaning of the word as used in the two sections (2502 and 3019).

There is, however, no controversy in this case but that the boxes exported were articles manufactured and that the same were composed of materials imported; but were they manufactured in the United States, and were the shooks out of which they were made "materials" within the meaning of the statute?

28 Material may be defined generally to be any "matter which is intended to be used in the creation of a mechanical structure." (71 Penn., 293; 36 Wis., 29, Bouvier.)

The words "articles" and "materials" both appear in the section, but in different connections, and we think it clear that Congress intended their use in a different sense.

The first, we think, was intended as "articles" complete in their manufacture; while as to the other we think unmanufactured

"materials" was intended, or at least "materials" in such an unfinished state as to require the expenditure of a material amount of labor in the United States to prepare and shape the same for use.

Otherwise the mere fastening together in the United States of imported manufactured material into form for use would constitute the manufacture of the articles exported for drawback, and this we do not believe was the purpose of the statute.

The word "manufacture" has been the subject of judicial interpretation a number of times. Most of the decisions, perhaps, have been in cases where the question involved was as to the classification of articles subject to duty under our various tariff laws. In this class of cases it has been held that "a trifling amount of labor is often sufficient to change the nature of the article and determine its classification." (Saltonstall *v.* Wiebusch, 156 U. S., 601, 604; Arnold *v.* United States, 147 U. S., 494.)

But in the case of Kidd *v.* Pearson (128 U. S., 1–20), which arose under the prohibitory liquor law of Iowa, the court, in defining the distinction between manufactures and commerce, said: "Manufacture is transformation—the fashioning of raw materials into a change of form for use."

The definition of manufacture there given, was in line with the decision in the case of Hartranft *v.* Wiegmann (121 U. S., 609, 615), in which the court, in speaking of shells cleaned by acid and then ground on an emery wheel and intended for use as ornaments, said, "They were still shells. They had not been manufactured into a new and different article, having a distinctive name, character, or use from that of a shell."

In support of the definition here given, the claimant's counsel has cited us to a number of other decisions, but as they are to the same effect we need not consider them.

So, to constitute a manufacture, there must be a change of form—a transformation of the materials used—"into a new and different article, having a distinctive name, character, or use from that of" the materials used.

With this judicial definition in mind, let us ascertain, if we can, the purpose of the statute under consideration and then see if the articles manufactured come within its provisions.

First, it is quite evident that revenue was not the purpose of this section, for in case the manufactured articles are exported, the duty paid on the materials of which such articles are composed is allowed as a drawback to the exporter less 10 per cent.; and by the act of March 3, 1875, section 3 (18 Stat. L., 340), it is provided "that of the drawback on refined sugars exported allowed by section three thousand and nineteen of the Revised Statutes, only one per centum of the amount so allowed shall be retained by the United States."

29 And 1 per cent. is the amount of duty to be retained under the provisions of the act October 1, 1890, section 25 (26 Stat. L., 617).

In the case of Campbell *v.* United States (107 U. S., 407, 413) the court held that the purpose of the drawback provision was to make

duty free imported material which was used in manufacturing where the manufactured product was exported for the benefit of drawback; so that it is quite clear that revenue was not the purpose of this statute.

Was it intended to encourage our domestic manufactures or export trade or both?

That Congress has the power to regulate foreign as well as interstate commerce by prescribing the rules which shall govern the same is beyond question and needs no citation of authorities; but see Gibbons *v.* Ogden (9 Wheat., 1); Gloucester Ferry Co. *v.* Pennsylvania (114 U. S., 196), etc.

In the exercise of this power Congress, by the statute, established a rule to the effect that imported dutiable material which has been transformed in the United States by the process of manufacture as therein provided may be exported for the benefit of drawback.

It will be observed that no provision is made in the statute for a drawback when such manufactured products enter into consumption in the United States, so we conclude that the drawback provision was intended in part to promote our export trade in such manufactures; not, however, at the expense or sacrifice of domestic manufactures, for as a condition precedent to the right of such drawback, the articles exported therefor must have been manufactured in the United States, and, too, "of materials imported on which duties have been paid."

The statute was not intended to encourage the importation of material to be used in manufactures when like material could be obtained in the United States, but it in effect says to those engaged in domestic manufactures, if you import dutiable material for manufacturing purposes and transform the same into some manufactured product in the United States you may export such product for the benefit of drawback, but not otherwise.

We are therefore of the opinion that the controlling purpose of the statute was to foster and encourage domestic manufactures.

In Arnold *v.* United States (147 U. S., 494, 497) the court, in speaking of the tariff act — 1890, said: "The idea which runs through this statute is well known to be that of protection to our manufactures." And the same is true of the tariff act — 1883. (Saltonstall *v.* Wiebusch, 156 U. S., 601, 604.) And we have no reason to suppose that a different rule would be applied to section 3019, even though the degree or stage of manufacture of an imported article may be less than that required of articles exported for the benefit of drawback.

Certainly Congress did not intend by the provision that articles might be partially manufactured in the United States of imported dutiable material, then exported for the benefit of drawback and their further manufacture completed in a foreign country, as this would manifestly defeat the purpose of the statute.

It is not sufficient under the statute to take measurement and cut cloth for the purpose, but the coat as well must be made in the United States to constitute it a manufactured article, entitling the exporter thereof to the benefit of drawback.

30 If we are correct in this, it follows, we think, that Congress did not intend that materials imported in such an advanced stage of manufacture, as the shooks were in this case, would bring the boxes, when nailed together and trimmed, within the meaning and intent of the statute, as articles manufactured in the United States.

The shooks are classed, by the statute under which they were imported, with casks, barrels, and packing boxes, presumably finished products, and are dutiable at the same rate. So that had the shooks been nailed together and trimmed in Canada, as they were in the United States, and then imported as packing boxes, the rate of duty would have been the same as that paid on the shooks.

Thus showing that Congress, by the classification they made, regarded box shooks as finished or manufactured materials for some specific purpose; and when we examine the language used in the section, "Casks and barrels, empty, sugar-box shooks, and packing boxes, and packing-box shooks, of wood," etc., we must conclude that the purpose for which the shooks were imported was for nailing together into boxes, and this the findings show was done.

So that the finished condition of the shooks, in fact, not only harmonizes with the classification in the statute as stated, but is also in harmony with the definition of the word "shook" as given by lexicographers. (See The American Mechanical Dictionary.)

The shooks having been prepared in Canada complete for use, can it be said that the boxes fashioned therewith were manufactured in the United States? We think not.

The preparation of the material was not only necessary to make the box, but was an essential and inseparable part of the manufacture thereof, under section 3019, for the reason that the box could not have been otherwise manufactured.

Material cannot be transformed or fashioned "into a change of form for use" without undergoing the process of manufacture necessarily incident to the article manufactured; so that the manufacture of a box necessarily includes as a part thereof the manufacture or preparation of the materials therefor.

We are therefore of the opinion that the manufacture of the boxes began when the materials therefor were prepared and shaped for the purpose in Canada. The utility of the material was thereby limited to the purpose for which it was prepared; and in this respect is unlike the case of Worthington *v.* Robbins (139 U. S., 337).

The mere nailing of a box together with material prepared for the purpose and then trimming the same, as set forth in the findings, is not, *per se*, a transformation of such material, but is merely a completion of the transformation which began with the preparation of the material therefor.

To construe the statute as contended for by the claimant would be to say, in effect, that the material for any structure may be manufactured in a foreign country, then imported into the United States, fastened together into form for use as intended, and then exported, for the benefit of drawback, as an article manufactured in the United States.

Upon this theory furniture imported in separate parts or pieces, as in the case of Hedden *v.* Richards, 149 U. S., 346, could be fastened together into form for use and then exported for the benefit of drawback as articles manufactured in the United States.

31 This, in our judgment, would not only defeat the purpose of the statute, but would have the effect to encourage foreign rather than domestic manufactures, especially if such material could be manufactured in foreign countries cheaper than it could in the United States.

And while this would tend to promote our export trade in such articles and doubtless be of financial interest to such exporters, it certainly would not promote or encourage domestic manufactures.

The claimant or its officers could not have been misled by the statute, as they were bound to know the condition on which they could export the boxes for the benefit of drawback.

The regulation of the Treasury Department in allowing a drawback on the exportation of boxes likewise manufactured, as set forth in the findings, was not sufficiently long and continuous to bring it within the decisions of the Supreme Court in the case of Edwards *v.* Darby (12 Wheat., 206), United States *v.* Hill (120 U. S., 169, 182) and authorities there cited. "A regulation of a department, however, cannot repeal a statute." (Merritt *v.* Cameron, 137 U. S., 542, 551.)

If we are correct in what we have said, it follows that the words "articles wholly manufactured of materials imported on which duties have been paid, etc.," mean, first, that such articles shall have been manufactured in the United States; second, that such articles shall have been wholly manufactured of imported materials on which duties have been paid, and, third, that such manufacture includes, as a necessary part thereof, the manufacture or preparation of the materials therefor.

Applying what we have said to the case at bar, keeping in view the controlling purpose of the statute, we must conclude that the boxes exported were not manufactured in the United States; that the labor expended in the United States in nailing the shooks together and trimming the boxes was but the completion of the transformation or manufacture which began in Canada with the preparation of the material therefor, and the claimant is not entitled to recover.

We have not deemed it necessary to consider the question as to whether an allowance could be made for the nails, for the reason that while they were manufactured in the United States of imported steel rods on which duties were paid, they were not exported as such, but formed a part of the boxes which were not manufactured in the United States for the reasons stated.

We, however, have found the amount of duties paid on the steel rods, so in case of an appeal the question may be presented to the Supreme Court.

Nor have we deemed it necessary to consider what distinction, if any, there may be between shooks tied up in a single bundle, each sufficient for a box, or tied up separately, as set forth in the findings,

for the reason that the purpose of the statute could not be defeated by the manner in which the shooks were bundled for shipment, and for the further reason that the controverted question in this case is as to where the boxes were manufactured; and having reached a conclusion adverse to the claimant on this proposition, the petition is dismissed.

32 VI.—*Judgment of the Court.*

THE TIDE WATER OIL COMPANY
v.
THE UNITED STATES. } 17010.

At a Court of Claims held in the city of Washington on the 13th day of January, A. D. 1896, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimants be dismissed.

BY THE COURT.

33 VII.—*Application for and Allowance of Appeal.*

THE TIDE WATER OIL COMPANY
against
THE UNITED STATES. } No. 17010.

From the judgment rendered in the above-entitled cause on the thirteenth day of January, 1896, in favor of the defendants, the claimants, by Edwin B. Smith, their attorney, on the 29th day of January, 1896, take and make application for and give notice of an appeal to the Supreme Court of the United States.

THE TIDE WATER OIL COMPANY,
By EDWIN B. SMITH, *Claimants' Attorney.*

Filed January 29, 1896.

Allowed in open court March 16, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

34 In the Court of Claims.

THE TIDE WATER OIL COMPANY
vs.
THE UNITED STATES. } No. 17010.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the judgment of the court dismissing the petition, of the application of

the claimant for and the allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 27th day of March, 1896.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 16241. Court of Claims. Term No., 149. The Tide Water Oil Company, appellant, *vs.* The United States. Filed March 30th, 1896.

APPELLANT'S BRIEF

Supreme Court of the United States.

OCTOBER TERM, 1897.

THE TIDE WATER OIL COMPANY,
Appellant,

AGAINST

THE UNITED STATES.

No. 149.

BRIEF FOR APPELLANT.

Statement.

This is an appeal from the Court of Claims.

After finding that the appellant, then (and now) a New Jersey corporation, doing business at Bayonne in that State, in 1889 and 1890, imported from Canada box-shooks and from Europe, steel rods, upon the importation of which duties to the amount of $39,636.20 were paid to the United States, $837.68 thereof being upon the rods (Rec. 13, 14, fol. 23) that court further found, as follows, viz.:—

III.

The box shooks imported as set forth in finding II were manufactured in Canada from boards, first being planed and then cut into required lengths and widths, intended to be substantially correct for making into boxes without further labor than nailing the shooks together. They were then tied up in bundles of sides,

or ends, of bottoms, and of tops of from fifteen to twenty-five in a bundle for convenience in handling and shipping. (Rec. 14, fol. 23)

IV.

The shooks so manufactured in Canada and imported into the United States as aforesaid were, at the claimant's factory in Bayonne, N. J., constructed into the boxes or cases set forth in Exhibit E to the petition herein, by nailing the same together with nails manufactured in the United States out of the steel rods imported as aforesaid, and by trimming when defective in length or width to make the boxes or cases without projecting parts, *i. e.:*

The shooks were imported in bundles of ends, of sides, of tops, and of bottoms, each part coming in bundles separated from the bundles of other parts. From one of these bundles of ends the ends of a box are selected, to which the sides taken indiscriminately from any bundle of sides are nailed by nailing machines; then the sides are trimmed off even with the ends by saws; then by bottoming machines bottoms taken from any bundle of bottoms are nailed on; then the bottoms are trimmed even with the sides by saws; then, after being filled with cans, the tops are nailed on; and then the boxes or cases are ready for exportation.

The cost of the labor expended in the United States in the necessary handling and in the nailing and trimming of the boxes as aforesaid was equal to about one-tenth of the value of the boxes.

The principal part of the labor performed in trimming the boxes was occasioned by the Canadian manufacturer not cutting the shooks into the required lengths and widths for use in making the boxes, and for which the claimants sometimes charged the cost of such trimming to the Canadian manufacturer. (*Ib.* fols. 23, 24.)

V.

The boxes or cases made as aforesaid were exported from the United States to foreign countries in conformity with the regulations of the Treasury Department then in force, to wit, Treasury regulations of

1884, sections 966, 967, and 968, hereinafter set out, relating to drawbacks upon the exportation of articles wholly manufactured of imported materials, and cases so manufactured were entered for such drawback upon the exportation thereof. *(Ib.* 14, fol. 24.*)*

VI.

For about four years prior to July 31, 1889, the Treasury Department had allowed and paid a drawback upon the exportation of boxes made from imported shooks fastened together with nails made from imported steel rods as aforesaid; and the Treasury Department was requested to pay the drawback on the exportation of the boxes or cases set forth in Exhibit E to the petition, but refused for the reasons set forth in the following communication addressed to the collector of customs at New York:

TREASURY DEPARTMENT, July 31, 1889.

SIR: Referring to department letter of March 2, 1885, addressed to the then collector at your port, in which a rate of drawback was established on shooks used in the manufacture of boxes, you are informed that the department has recently given the matter further consideration, and it appears upon investigation that the boxes are made complete in Canada, with the exception of nailing, and that the only manufacture which they receive in this country consists in their thus being nailed together, which part of the labor is omitted to be done in Canada merely for convenience in shipping to the United States.

The boxes appear to have been manufactured complete abroad, and in the condition imported resemble the finished furniture imported in pieces which the department has heretofore held to be dutiable at the rate applicable to finished furniture (see Synopsis, 4272).

The simple act of nailing them together is not, in the opinion of the department, a manufacture within the meaning of section 3019, Revised Statutes, and the authority to allow drawback thereon is hereby revoked.

You will accordingly receive no further entries for drawback in such cases. *(Ibid.)*

Respectfully yours,

GEORGE C. TICHNOR,
Assistant Secretary.

Collector of customs, New York.

VII.

The Treasury regulations of 1884 referred to in finding V, viz., articles 966, 967 and 968, are as follows:

ART. 966. On articles wholly manufactured of imported materials on which duties have been paid, a drawback is to be allowed, on exportation, equal in amount to the duty paid on such imported materials, less 10 per cent. thereof, except on exportations of refined sugars, in which case the legal retention is 1 per cent.

ART. 967. The entry in such cases will be as follows, and must be filed with the collector at least six hours before putting or lading any of the merchandise on board the vessel or other conveyance for exportation:

(Form No. 282.)

ENTRY OF MANUFACTURED ARTICLES FOR EXPORTATION WITH BENEFIT OF DRAWBACK.

Entry of_____, manufactured in the United States from_____of foreign growth and production, intended to be exported by_____ on board the_____, _____, master, for____ _____, with benefit of drawback, under the provisions of section 3019 of the Revised Statutes of the United States:

Marks and Numbers.	Number and description of articles.	Quantity.	Value.	By whom manufactured.	Where deposited.

MATERIALS ENTERING INTO THE MANUFACTURE OF THE ABOVE ARTICLES.

Description of material.	By whom imported.	Name of Vessel.	When imported.	Where imported.	Whence imported.	Quantity.	Value.	Rate of duty paid.

----------, Exporter.

OATH OR AFFIRMATION OF EXPORTER.

I, ---------- ----------, do solemnly, sincerely, and truly ---------- that the ---------- described in the annexed entry, now to be laden on board ----------, ---------- ----------, master, ---------- truly intended to be exported to ----------, and not to be brought back or reladen within the limits of the United States. I further ---------- that the said ----------, according to the best of my knowledge and belief, ---------- wholly manufactured on ----------, the growth and production of a foreign country, imported as in said entry stated; that the duties chargeable thereon by law on importation have been paid, without any allowance or deduction for damage or other cause, except (here state if any allowance was made, and what), and that no part of such duties have been heretofore refunded by way of drawback or otherwise.

---------- ----------

---------- before me this -------- day of ----------, 18---.

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The proprietor and the foreman of the manufactory in which the articles were manufactured must make

oath, to be indorsed upon or securely attached to the entry, in the following form:

We,_____, proprietor, and_____, foreman of the_____, do severally, solemnly, sincerely, and truly_____ that the_____described in the within (or annexed) entry was manufactured at the_____, wholly from_____, of the growth or production of a foreign country, imported, and on which duties have been paid, as in said entry stated, to the best of our knowledge and belief.

_____

_____before me this_____day of_____, 18___.

_____

Art. 968. Like proceedings will be had as in cases of withdrawal from warehouse for exportation, and bond executed in the form following:

(Form No. 283.)

Bond for Exportation of Manufactured Articles with Benefit of Drawback.

Know all men by these presents that we,_____, of_____, as principals, and _____, of_____, as sureties, are held and firmly bound to the United States of America in the sum of_____dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, by these presents.

Witness our hands and seals this_____day of_____, in the year one thousand eight hundred and_____,

Whereas the above-bounden_____ hath laden on board the_____, _____, master, for _____, to be exported with benefit of drawback under the provision of section 3019 of the Revised Statutes of the United States, certain manufactured articles, consisting of—

Marks.	Numbers.	Number and description of articles.	Quantity.	Value.

manufactured in the United States from ----------, of foreign growth and production, on which the legal duties on importation have been paid, as set forth in an export entry of domestic manufactures, and papers thereto annexed, lodged with the collector of the port of ---------- by said ----------, and bearing the same number herewith; which ----------is found by the inspector of the customs at said port of ---------- to be in quantity, ----------:

Now, therefore, the condition of this obligation is, that if the aforesaid manufactured articles, or any part thereof, be not relanded in any port or place within the limits of the United States (ship-wreck or other unavoidable accident excepted), and if the certificates and other proofs required by law and regulations of the delivery of the same at the aforesaid port of ----------, or any other port or place without the limits of the United States, shall be produced at this office within ---------- from the date hereof, then this obligation to be void; or otherwise, to remain in full force.

----------, (SEAL)
----------, (SEAL)

Signed, sealed, and delivered in presence of----------
(Rec. 15 to 18, fols. 25, 26.)

From the foregoing findings of fact the court finds the ultimate fact, *so far as it is a question of fact*, that the boxes or cases so exported were not manufactured in the United States (Rec. 18, fol. 26).

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is not entitled to recover and the petition is dismissed. *(Ibid.)*

Assignment of Errors.

The appellant assigns for error :

1. That the conclusion of the findings of fact is not the finding of any ultimate fact, but of a wrong conclusion from the ultimate facts thereinbefore found as proved by the evidence.
2. That said finding is an erroneous determination of the meaning of the word " manufactured " in the applicable section, 3019, of the Revised Statutes of the Unit d States.
3. That said finding is antagonistic to the preceding findings of facts found upon the evidence, and is not sustained thereby.
4. That finding III. of the facts found is erroneous in its use of the word " substantially," the real facts proved by the evidence being found more accurately and in greater detail in finding IV.
5. There is error in the conclusion of law, in this ;— that it decides " that the claimant is not entitled to recover, and the petition is dismissed," whereas the decision should have been that the claimant is entitled to recover $39,636.20, less the statutory retention.
6. That the steel rods imported were unquestionably a subject of drawback, even upon the view taken by the court below, and it should have given judgment in favor of the petitioner for at least the duties paid thereon, less 10%.
7. Judgment should have been given in appellant's favor for all exportations after October 1, 1890.

STATUTES.

R. S. 3019. " There shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall

be prescribed by the Secretary of the Treasury. Ten per centum on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks respectively."

As to the exportations per ship Mexico—per export entries December 12, 16 and 26, 1890 in Ex. D (Rec. 9) and as to all export entries on and after October 1, 1890, found in Ex. E (Rec. 10 to 12) Sec. 25, act of October 1, 1890, is cited, viz.;

"SEC. 25. That where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials shall so appear in the completed articles that the quantity or measure thereof may be ascertained.

And provided further, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe. (26 Stats. 617.)

Propositions.

Upon the facts and merits of the case, these propositions are maintained in the ensuing argument, viz. ; —

FIRST.

R. S. sec. 3019 and the act of October 1, 1890, sec. 25 (like all drawback laws) are intended primarily for the promotion of our foreign commerce, by relieving the exported article of the burden of the tax or duty placed upon its consumption in this country :—and R. S. sec. 3019 is to be construed and applied with a view to this obvious purpose of its enactment. (169 U. S. 23.)

MEMO. The statutes of recent years, allowing the export for drawback of articles in a form changed from that in which they were imported, by the addition of domestic labor or materials, do promote the sale abroad of our own productions, incidentally to the development of our foreign commerce ; our earlier statutes subserved *only* the latter, which is still the primary, purpose.

SECOND.

Thus to promote our foreign commerce, and to stimulate its carriage of our products to other lands, the course of legislation has been the progressive relaxation of the restraints and removal of the obstacles originally impeding the exporting again of imports, and of American articles made from, combined with, or contained in, such exports ; and this tendency must be considered in construing successive steps in our system of legislation granting drawback privileges.

THIRD.

1. Our tariffs (like all tariffs) have been enacted with the obvious purpose of having their burdens fall upon

the ultimate *domestic* consumers; incidentally protecting our manufactures in the *home* market.

2. Correlatively, and connected therewith, our drawback legislation (like all such laws) has been intended to relieve our exports from the burden of these duties, that they might enter other countries on even terms; incidentally thereby promoting the consumption of our products in foreign markets. (169 U. S. 23.)

Any construction which loads our exports with the domestic consumer's burden is contrary to the true legislative intent, and must be erroneous.

FOURTH.

Unless some technical meaning is proven, words in a drawback (or any other) statute are to be construed as importing their meaning in common speech.

Accordingly, in R. S., sec. 3019, 'articles' means just what it does in sec. 2502 and elsewhere, and in ordinary parlance.

The same is true of the word 'materials' in sec. 3019; and of the word 'manufactured'.

The antithesis in that section is merely between the thing exported and that out of which it is made.

FIFTH.

The 'manufacture' of an article from certain materials is the putting of these materials into such new form as is commonly designated by a distinctive name, to subserve a use of which they were not capable in their previous form. (156 U. S. 14.)

The finished product of one manufacture is the material of another; as warp-yarns of cloth; woolen (or other) goods of 'wearing-apparel', etc.; or raw sugars of refined. *(Ibid.)*

SIXTH.

The qualifying force of 'wholly', in sec. 3019, attaches to the foreign origin of all the materials used, and not to the place of manufacture.

SEVENTH.

The amount of labor expended, or of the axpense incurred, in transforming materials into a new article is immaterial (156 U. S. 604); especially under our drawback statutes, which allow the refund where an import is exported in the same condition in which it was entered. (R. S. sec. 3015.)

EIGHTH.

Every particle of wood and iron or steel (the latter imported in bars) were of the origin of different foreign countries; the exported boxes which, in fact, were wholly made here out of these imported shooks and nails (coming in as bars) were a new and distinctive article from their constituents; capable of, and employed in, a use to which neither was adapted in the form in which it was imported.

NINTH.

Having answered every statutory requirement, and complied with every treasury regulation on this subject, in the manufacture, in our factory established for that purpose in New Jersey, of an entirely new article, wholly made of foreign materials upon which duties were paid, we are entitled to judgment for the refund of such duties, by reason of our exportation of the manufactured article.

POINTS.

I.

The Issue:

There is no dispute as to what the claimants did with the foreign materials, of wood and iron, upon the importation of which they paid $39,636.20 to the United States in duties: though the findings properly summarize, instead of stating in detail, their manipulation of these materials. They made them up into boxes and exported them, conformably to the purpose declared upon their original entry. (Rec. 14, top and bottom.) The sole question here is, whether what, concededly, was done entitles appellants, upon such exportation, to the drawback allowance, "on all articles wholly manufactured of materials imported, on which duties have been paid," given by R. S. sec. 3019 (Rec. 2, par. 'Tenth') and by sec. 25, act of Oct. 1, 1890. (26 Stats. 617; *ante*, pp. 8, 9).

The Treasury Department, after several years' recognition of similar claims, rejected the present one, on the ground that "the simple act of nailing" together [*Mem.* We did more, in fact] the shooks was not "a manufacture, within the meaning of sec. 3019." (Rec. 15, finding VI.) The Court of Claims sustained this position, in its finding IV saying we 'constructed' the boxes, out of the so-provided materials, at our *factory* in Bayonne, N. J., (Rec. 14, IV.) instead of manufacturing, or making, them in our said box-factory.

Denying that any other than the ordinary meaning attaches to the word 'manufacture' in R. S., sec. 3019, we insist that our *exported boxes* were "articles wholly manufactured of imported materials" within the meaning of that section, and the common understanding of the language there employed.

II.

The findings.

To obtain an approximately correct idea of the facts proven, the several findings of the Court must be carefully examined, separately, as well as taken together.

For instance :—while finding III (Rec. 14) says the imported shooks were manufactured from planed boards, in Canada, cut into requisite lengths and widths "*intended* to be *substantially* correct for making into boxes without further labor than nailing" the very next finding *(Ib.*, IV*)* recites that such intention was not so carried into effect but that, after the sides were nailed to the ends they were sawed off even with the ends ; the bottoms were then nailed on, and they had to be sawed off even with the sides ; the principal part of this trimming being because of "the Canadian manufacturer *not* cutting the shook into the required lengths and widths for use in making the boxes."

This fourth finding indicates the customary *modus operandi*—the course usually pursued in "making the boxes." It concludes by adding that—probably, when the excessive length or width bothered the trimming-machines—"sometimes" exceptionally, the cost of trimming was charged to the Canadian manufacturer—the materiality of which occasional incident is not apparent. The necessity of trimming attached to the making of each box ; a part of the process of manufacture. Were it permissible to refer to the evidence, it would be found that the sawing was done by automatic machines through which *every imported shook* passed ; being put through twice, as finding IV indicates, in the making of each box. Unless the excess in length or width unfitted the shook for reception by these sawing-machines, it was of no consequence that they were "*substantially* correct for making into boxes," since they were not absolutely so. Since they had to be

sawed, the task was no less to saw off three-quarters of an inch than three inches. Untrimmed, they might be capable of use, as receptacles; but accurate trimming is an imperative necessity for their employment in the business of exportation; indeed, unless the bottom and sides were flush with the ends, they would not be merchantable boxes for any use. As cargo, the boxes must pack close together under deck. If projecting parts produced interstices between them, the wrestling of the huge hulk with the tempestuous seas and gales of a long voyage would so strain and rack them their contents would be emptied and discharged into the vessel's bilge. "They fasten it with nails and hammers, *that it move not*" (Jere. X, 4); and, for the same reason they saw it repeatedly, with a trimming-machine.

"From the foregoing findings of fact" [and in no other wise] "the court finds the ultimate fact, *so far as it is a question of fact*, that the boxes or cases so exported were not manufactured in the United States." (Rec. 18, fol. 26.)

The issues being whether our exportations were such articles, wholly manufactured of imported materials, as were intended by R. S. Sec. 3019 and the later act, presents rather a question of law than of fact, upon the facts found which state what was done. At any rate, the stated conclusion (whether of law or of fact) upon which the judgment rests, being drawn wholly as an inference from the preceding findings, these must be considered in order to determine the correctness of the conclusion and of the judgment entered in accordance therewith.

"Confessedly, the court has found all the facts which have been directly established by the evidence. The facts are not evidence in the sense that evidence means the statements of witnesses or documents produced in court for inspection. They are the results of evidence, and whether they establish the ultimate

fact to be reached is, if a question of fact at all, is in the nature of a question of law."

U. S. v. Pugh, 99 U. S. 270.
Same v. Clark, 96 *Id.* 39.
Sun v. Ocean, 107 *Id.* 503.
Stone v. U. S. 164 *Id.* 383, and
Talbert v. Same, 155 *Id.* 46,
last sentences of opinions.
Sherman v. Hudson, 64 N. Y. 259, 260.

A general finding, like a general verdict, is controlled by a special finding.

Phelps v. Vischer, 50 N. Y. 69, 72.
Bennett v. Buchan, 76 *Id.* 386.

An appellant, in case of inconsistent findings, is entitled to rely upon those most favorable to him.

Swinger v. Raymond, 83 N. Y. 192.
Bonnell v. Griswold, 89 *Id.* 122.
Kelly v. Leggett, 122 *Id.* 633.

III.

The opinion below.

Though this court declares itself "not at liberty to refer to the opinion for the purpose of eking out, controlling or modifying the scope of the findings" (Stone v. U. S. 164 U. S. 383) yet its required presence with the transcript makes its desirable to remove any misapprehension it shows. It does show that our position was misapprehended where it says (Rec. 19, fol. 27) "there is no controversy but that the words 'in the United States' should be read in the statute," etc., in such a way as to make the word 'wholly' refer to the *process*, rather than to the *materials*, of manufacture. The government claimed this construction, in the Court of Claims; not admitting it, the sixth page of our

reply-brief below shows we simply declined to discuss it, as not arising in the case; and, in the oral argument, denying the construction, we considered it not material to consume time upon, because we deemed it incontestable that the very articles we exported (boxes) were in *fact* entirely made in this country. Still asserting this, as incontrovertibly shown by the findings, the argumentative use, in the opinion, of the suggested interpolation and the transfer of the qualifying "wholly," so as to apply to work and not to material, lead us to refer to the statutes, the context and history, to show that this application of 'wholly' is unsupported and erroneous. The 'materials' being the subject of import, and the 'articles' the subject of export, may imply that the putting the imported materials into the shape of the exported article should be done in this country; and this was done in our case;—but what we object to is the transposition of the *express* statutory requirement from the material to the labor performed here; and then using this perversion as a ground for arguing that the manufacture of these boxes was not entirely done in this country. This looks like a confession that, but for such unsound construction and erroneous reading of the statute, the judgment of the Court of Claims would not have been what it was. Therefore, we will consider the course, history, object and true reading of R. S. sec. 3019, and of earlier, contemporaneous and later statutes relating to the subject of drawbacks.

IV.

Drawback Statutes.

Their Object, etc.

The statutes upon the subject sustain the statement of political economists, that drawbacks are allowed—not to raise governmental revenue, nor to protect domestic manufactures of *home-consumed* articles—but to promote our foreign commerce.

The definition in McCulloch's Commercial Dictionary, below, with its quotation from Adam Smith, marks the distinction between this and a bounty, or gratuity.

"Drawback, a term used in commerce to signify the remitting or paying back of the duties previously paid on a commodity on its being exported.

A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold abroad for *less* than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. Drawbacks, as Dr. Smith has observed, 'do not occasion the exportation of a greater quantity of goods than would have been exported had no duty been imposed. They do not tend to turn towards any particular employment a greater share of the capital of the country than would go to that employment of its own accord, but only to hinder the duty from driving away any part of that share to other employments. They tend not to overturn that balance which naturally establishes itself among all the various employments of the society; but to hinder it from being overturned by the duty. They tend not to destroy, but to preserve, what it is in most cases advantageous to preserve—the natural division and distributton of labour in the society.' (Vol. ii, p. 352.)

Were it not for the system of drawbacks, it would be impossible, unless when a country enjoyed some very peculiar facilities of production, to export any commodity that was heavier taxed at home than abroad. But the drawback obviates this difficulty, and enables

merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign market on the same terms as those fetched from countries where they are not taxed.

Most foreign articles imported into this country may be warehoused for subsequent exportation. In this case they pay no duties on being imported: and, of course, get no drawback on their subsequent exportation.

Sometimes a drawback exceeds the duty or duties laid on the article; and in such cases the *excess* forms a real bounty of that amount, and should be so considered. (1 M'Culloch Commercial Dictionary, 611.)

Rapalje & Lawrence's Law Dictionary, *h. t.*, adopts the foregoing definition, *verbatim*, without credit.

Other authorities all give substantially similar definitions; but it is useless to quote or cite them, because the decisions of this Court sufficiently define, and state the purpose of, a drawback.

"The purpose of the drawback provision is to make duty free imports which are manufactured here and then returned where they came or to some other foreign country—*articles which are not sold or consumed in the United States.*"

Campbell v. U. S., 107 U. S. 413.

Inasmuch as goods may be exported unchanged, in their original package, with drawback, the last part of the above quotation is more comprehensive and correct.

The statement most accurate is that in 169 U. S. 23, that "it is a special advantage extended by government *in aid of manufactures and trade.*" . . . "A device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all."

U. S. v. Passavant, 169 U. S. 23.

The third section of the earliest tariff act, July 4, 1789 (1 Stats. 26, 27) allowed drawback of all duties

(less 1%) paid on any goods imported, except distilled spirits, if exported within one year after such payment; *provided*, they were exported in the original package, from the port where originally imported. *(Id.* 46.*)*

The act of August 10, 1790, § 3 *(Id.* 181 bottom*)* expressly states that one per centum is "retained as an indemnification for whatever expense may have accrued" &c.

The act of March 3, 1791, expressly enacts "for the encouragement of *the export trade* of the United States" sec. 51, allowing a drawback. (1 Stats. 210 bottom.)

The act of January 29, 1795, relating entirely to drawbacks, removed restrictions requiring exportation from port of original entry, declared found to occasion "great loss and inconvenience". *(Id.* 411-2*)*.

The acts laying an embargo provided that the time these acts were in force should not be deducted from the twelve months allowed for exportation. (2 Stats. 454, 748.)

The drawback acts excepted from the privilege the exportation of products of places where our vessels were not free to trade.

Each piecemeal tariff, touching a few articles, had its section authorizing drawback on exportation according to general laws. For example; act of April 20, 1818, increasing the duties on 'certain manufactured articles', §§ 3 and 4 (3 Stats. 458-9) and another act of same date, "to increase the duties on iron", in various forms. *(Id.* 460.*)* So, act of March 3, 1819, regulating duties on certain wines, §§ 3 and 4. *(Id.* 515.*)* There were many such provisions.

From early days, the duty upon sugar imported raw and refined here was drawn back upon exportation of the refined article. This was for the benefit of our West Indian barter of lumber, fish, etc., for raw sugars; refining there not being done satisfactorily, if at all. Among the *sweetest* of early boyhood's recol-

lections is the molasses and heavy, dark, damp sugar which Perkins' brigs brought into Kennebunk, in lieu of the shingles and salt cod-fish they took out. Our West-India trade, in those days, was, almost strictly, barter; the captains sold the outward, and bought the inward, cargo.

In 1833, our imports into Havannah exceeded that of Spain and trebled those of England: our tonnage employed therein was double Spain's and five times that of England; notwithstanding discriminating duties in favor of Spanish vessels. 1 McCulloch's Com. Dict. 744.

For the same commercial reason, there was a drawback allowance on spirits distilled from imported molasses; and, probably for a like reason, the tariff of May 22, 1824, § 4, enacted "that the drawback allowed by law on plain silk cloths shall be allowed although the cloths, before the exportation thereof, shall have been coloured, printed, stained, dyed, stamped, or painted, in the United States." (4 Stats. 29.)

Dyeing must be an inconsiderable addition to the imported value.

The act of March 2, 1861, § 27, allowed partially worn railroad iron to be introduced for repair free of duty, under bond to export it. (12 Stats. 197 top; now R. S. Sec. 3021.)

August 5, 1861, a fortnight after the battle at Bull-Run, a congress absolutely controlled by strong protectionists (through the withdrawal of Southern senators) enacted a law to obtain the needed increase of revenue from imports. Its fourth section (12 Stats. 293) is *verbatim* sec. 3019 of the revision. (Rec. 18, fol. 27.) At that time, by that Congress, under such circumstances, first appeared (in its general application to *all* foreign, duty-paying, materials) the provision giving a refund of the duties thereon, when such materials were here made up into exported articles. The idea of such correlative provisions, of duties and drawbacks, had

been advanced, for forty years by the advocates of the *soi-disant* " American system."

The same congress, July 1, 1862, by Section 116 (12 Stats. 488) of the drastic act " to provide *internal* revenue " gave a drawback of the whole excise upon exportation; excepting only raw cotton.

Mr. Clay, in an elaborate exposition of his ideal revenue system, lauded " the joint effect of both principles, the domestic industry nourishing the foreign trade, and the foreign commerce, in turn, nourishing the domestic industry."

With the exceptions hereinbefore indicated, mainly promotive of our trade with the Indies (then our most valuable commerce) drawbacks had been confined to goods exported in their entered condition. Benton's Abridgment indicates that such provisions passed *nemo contradicente;* but the idea of extending them to *all* 'articles' made, by *any* process of *manufacture*, from foreign *materials*, was prevalent in the minds of protectionists.

In April, 1820, the newly-formed House Committee on Manufactures, through Mr. Henry Baldwin (ten years later a justice of this court) reported its proposed tariff, in explanation of which Mr. Baldwin premised that " gentlemen must not deceive themselves in thinking that the people of this country did not know that the *consumer* of foreign goods, and not the foreigner or importer, pays the impost. The *consumption* of foreign produce, and not its importation, is the source of the revenue."

Further explaining the tariff-bill of his committee, Mr. Baldwin observed that

" The fourth section allows a drawback of the duty on tin and copper when made up and exported; *this is a new feature in our system*, but deemed necessary for the double purpose of aiding the manufactures and commerce of the country. *It would have been extended to other articles*, but it was thought better not to make the bill too complicated, or to go too much into detail.

The manufacture of these articles for the West India market would be a source of employment to our labor, and profit to the employer, if enabled to compete [in the West Indies] with the same articles made and imported [there] by others [*i. e.*, foreigners]. With a duty of 20%, our workmen would be excluded [from the West Indian market]; with this drawback, they come in [to that market] on equal terms. *These articles present the commencement of a system, which we must some day adopt*, and which will make the foundation of our prosperity unshaken. It consists in imposing such a duty as will secure our home consumption—an excise on consumption, for revenue; on the exportation a drawback of excise;—thus making the manufacture of one article exemplify the policy and all the great objects of Government. (VI Benton's Abdg. 614.)

Though the bill, and certain of its separate provisions, were opposed strongly, there was not a voice raised against this fourth section. Only amended by a five-cent reduction of the salt-duty, the bill passed to be engrossed Friday, April 28, 1820, by a vote of 90 to 69. *(Id.* 651.*)*

An act of March 3, 1863, § 37, gave a drawback on the exportation of cordials and liquors manufactured wholly, *or in part*, of domestic spirits. (12 Stats. 730.) Another act of the same date (now R. S. 3026) in the stress of the war, allowed drawback on exportation of gunpowder in making whereof foreign salt-petre was used. (12 Stats. 742, § 7.) The Encyclopædia Brittanica gives the constituents of United-States gunpowder as three-quarters saltpetre, one-eighth each of charcoal and sulphur. (VII Am. Cy. 34, citing Ordnance Manual.) Thus, an article of easy manufacture, of materials three-quarters foreign and one-quarter domestic, was given—and still enjoys—the benefit of drawback.

By the act of June 6, 1872, § 9 (17 Stats. 238—now R. S. sec. 3020) a drawback upon various articles made of foreign metal with wooden parts of domestic growth was allowed, whenever the foreign element exceeded the native in value. In an earlier act, March 7, 1864, § 6 (13 Stats. 16) there was authorized a refund upon

exportation of all goods made of cotton upon which an internal excise had been paid; and the act of June 30, 1864, § 171 *(Id.* 302*)* extended this privilege to all articles subjected to internal tax, with a few specified exceptions. The object of the drawback allowance of customs duties and of internal taxes was the same;—to promote the carriage and admission of our exports into other countries on equal terms with those from other lands.

R. S. 3020 was so amended as to extend to tin cans, seven-tenths of foreign material. (Act of Mar. 10, 1880. 21 Stats. 67.)

Tedious and careful examination has been made of congressional debates upon successive tariffs; especially the acts of 1861, 1864 and 1872: all of which were exhaustively discussed; *but we do not find that any drawback provision was ever opposed* in Congress; though each had a hard struggle for the recognition to which it was entitled by the Treasury Department. Ex gr., this act of 1872, § 9, gives drawback to all named articles, having American-grown wooden stocks, handles, etc., provided the foreign element exceeded the domestic in value. The Treasury Department claimed that *all* the metal part—every portion except those of wood specified—must be foreign; but the Attorney-General advised to the contrary. (15 Atty. Gen. Ops. 147.)

Other examples might be cited.

Petitioner was incorporated in 1888. (Rec. 15 bottom.) For three or more years such boxes as they made, from Canadian shooks, had been exported and drawback allowed thereon. That the right to it had ever been claimed or challenged earlier than March 2, 1885, or the question mooted, does not appear, nor are we informed. The Court of Claims mistakes the effect of the letter of March 2, 1885, mentioned in the decision which brings us here, found on page 15 of the record. The letter of March 2, 1885, it will be seen, related solely to the "*rate*", not to the *right*, of draw-

back; *i. e.* what should be allowed for waste. Multitudinous rulings of the Treasury Department indicate that, whatever the material might be, an allowance of "wastage", for the loss of 'material', in making the exported 'article' was fixed by the Secretary: and that is what this letter of March 2, 1885, did.

As one example of these multitudinous instances of such wastage allowance, see SS. 91117, Nov. 16, 1888; "the quantity of the material so used being determined by adding to the net weight of the exported nails 7.5% of such net weight."

Fourteen of our exportations (Rec. 10, bottom, and 11) were under Act of October 1, 1890, printed *ante*, p. 9.

The Act of 1894 contained this section;—

"SEC. 22. The where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe." (28 Stats. 551–2.)

Section 30 of the act of July 24, 1897 is identical with the above.

The object of the foregoing summary is to show that all drawback statutes are intended, as is *expressly* stated in enactment of the fifty-first section of the act of March 3, 1791 (1 Stats. 210) "*for the encouragement of the export trade* of the United States."

Later enactments were to the same end, the implication being as strong as the expressed statement.

Other statutes might have been cited; as the right given to our own vessels to use imported coal upon their outward voyages, etc., etc. (Acts of 1883 and of 1890, Par. 441; of 1897, Par. 532.)

Also, the use of foreign materials in the construction of vessels, etc., etc.

The fundamental error, as we consider it, *of the Court of Claims is in assuming that the export provisions of the statute had any reference to protecting the manufactures of the United States.* While it may be true *generally* (as said) "that the controlling purpose of the statute was to foster and encourage domestic manufactures" (Opin., Rec. 21) such was *not* the intent of the *drawback* provisions. These might encourage the making of goods here *for exportation*, but were meant to relieve such goods from the duty laid upon domestic consumption. It *promoted*, but did not *protect*, our manufacture for export, except in the foreign market; and solely by lifting burdens.

There is not the slightest ground for saying that the statute was not intended to encourage the importation of material to be used in manufactures *when the like material could be obtained in the United States.*" *(Ibid.)* This intepolates into the statute a condition which Congress did not express nor intend. In drawback provisions (contrary to those regarding home consumption) the *foreign market* is that had in view; that our products and manufactures may stand on

equal footing *there* with those of other lands. This would not be the case if they had to be made here of materials more costly than those made up elsewhere; or if the vehicles in which our products were, and had to be, conveyed abroad were made more expensive than those of our foreign competitors, by reason of our protection of our home market. If our oils, competing in Japan with those of Russia, are made more expensive because our boxes in which the cans *must* go are subjected to duty, or are higher priced because of our duty, then we do not enter that market as unfettered as Congress intended we should be. Of manufactured articles, this is one of our largest exports; and its exportation was designed to be encouraged, not burdened.

Congress intends alike to stimulate commerce and manufactures; but it has to enact some provisions for one purpose and radically different ones for the other.

V.

Distinction between tariff and drawback statutes.

The distinction, that duties are levied upon *consumption*, to protect the manufacturer in the *home* market, and drawbacks allowed to aid the entry of our products and manufactures into a *foreign* market, thereby stimulating that commerce, has been shown in the preceding part of this brief; but this division is added better to present the recognition of this distinction in this court, in Congress and by authorities generally.

To this distinction, it is immaterial whether the levy of duties and the allowance of drawback are found in the same, or separate, statutes.

Chief-Justice TANEY states it as axiomatic, that "A tax in any shape upon imports is a tax upon the *consumer*, by enhancing the price of the commodity." License Cases, 5 How. 576 top.

1 Blackst. Com. 316.
Pennington v. Coxe, 2 Cr. 61, 62.

That it is a tax upon the ultimate domestic consumer is stated by Mr. Baldwin, in the passage herein before quoted *(ante*, pp. 22, 23*)* where he italicizes the statement that it is not upon importation, but upon *consumption;* and this truth is accepted as indisputable in all tariff debates. See remarks of Hons. Fernando Wood, Jan. 14, 1864, 1st Part Cong. Rec., 1st Sess., 38th Cong. p. 218, at top of first column, and of Daniel W. Voorhees in the same debate. The appraisement for duty is based upon the valuation in the foreign market. Even when transportation and other charges are added, nothing is ever added for disbursements after entry. Raw sugars, to be refined here, were the earliest statutory drawbacks, to promote our West-India trade. (See *ante*, p) In a case upon this subject, Chief-Justice MARSHALL observes "that it was most apparently the object of the legislature, *through their whole system of imposts, duties and excises*, to tax *expense* and *not* [home] *industry*." (2 Cranch, 61, 62.)

The statute there to be construed was that of April 6, 1802 (2 Stats. 148) repealing the act of June 5, 1794 (1 Stats. 384) imposing a duty on all snuff which "shall be manufactured *for sale within the United States*," and upon all sugars removed from the refineries for consumption; that exported being entitled, by sec. 14, act of 1794 (1 Stats. 387) not only to a refund of all excise or duties paid, without deduction, but, also, "adding to the drawback upon sugar so exported, three cents per pound, on account of duties paid upon the importation of raw sugar." *(Ibid.)* This act continued indefinitely by that of Feb. 25, 1801. (2 Stats. 192.)

The act of April 6, 1802, § 1, proviso (2 Stats. 148) preserves the existing right to all drawbacks.

Touching these statutes, the opinion of Chief-Justice MARSHALL proceeds ;

" With respect to the refiner of sugars, then, it muat, on the inspection of the act, emphatically be said thm the legislature designed him to collect the duty from *the consumer* [domestic, necessarily—all other being more than refunded upon exportation] but *never to pay it from the manufacture ;* that the tax should infallibly be imposed on expense, and never on labor."

Bennington v. Coxe, 2 Cr. 62.

The same reasoning must apply to all manufacture for export. The boiling and claying of sugars does not change their saccharine use, nor their name in common speech ; except that the qualifying adjective may be added in the purchase and sale of the purified article. The purpose, to give the manufactured article a fair show in the market to which it is exported, applies to every product of the industry of the citizen.

That drawback allowances are made so that our duties may not hamper our commerce and export productions, by a futile attempt to transfer our burdens to the foreign consumer, is too evident to admit further elaboration. If we could effect such a transfer, we might be the gainers thereby ; but each progressive step in brawback legislation is an admission of the futility of any such attempt, and that it could only react upon ourselves.

The prohibition against laying any tax upon the exports of any state may be mentioned, as indicative of a purpose to give anything we export a fair field, and a god-speed, in the mission upon which it departs. The principle applies to those commercial vehicles in which they *must* go, and which it is practically as necessary should go forth unburdened by our consumption taxes as the included products ; which necessity is recognized in the legislation touching such coverings and carriage.

Congress desires to promote our commerce, no less than our manufactures; to do this a system of legislation protecting one must contain provisions also protecting the other; and to apply a forced construction of language intended for one purpose so as to make it subserve, or be subordinate to, another is the primal error committed by the Court of Claims.

"As congress wishes to foster an honest and honorable commerce by its laws, *no less* than obtain revenue, it is neither the true policy nor right of departments or of courts, nor is it presumed to be their desire, to thwart the views of congress, or embarrass mercantile business, when not attended by equivocation and fraud, or to throw doubts and difficulties over the liberal course proper to be pursued generally towards the community in any branch of *trade*."

Marriott v. Brune, 9 Howd. *635.
U. S. v. Passavant, 169 U. S. 23.

Other provisions, besides those of drawback, have been inserted in our tariffs from the earliest of them down. Hence, it is wrong to try by construction to make every commercial provision of a dutying act subservient to a supposed policy of protection in its enactment. In his speech supporting the compromise tariff of 1833, Mr. Clay explained that the act of the previous year put 5% on French and 10% on Chinese silks, the former of which it was proposed to abolish, leaving the heavier duty on Chinese, unchanged; the purpose being to encourage trade with our second-best customer, England being always our best customer.

Daniel Webster said:—

"With me, it is a fundamental axiom, it is interwoven with all my opinions, that the great interests of the country are united and inseparable; that agriculture, commerce and manufactures will prosper together, or languish together; and that *all legislation is dangerous which purposes to benefit one of these without looking to consequences which may fall on the others.*" (3 Works, 96.)

Legislation avowing no such purpose ought not to be so construed as to accomplish it.

Mr. Webster said that his opponent in debate

"seems to argue the question as if all domestic industry were confined te the production of manufactured articles; as if the employment of our own capital and our own labor in the occupations of commerce and navigation were not as emphatically domestic industry as any other occupation." *(Ibid.* 129.*)*

Mr. Webster means that the great thing to be considered is labor, however employed, by sea or land; and that its prosperity increased our revenue from home-consumed imports. "When labor is employed, labor can consume; when it is not employed, labor cannot consume." (4 Webst. Wks. 536.)

Labor employed in preparing articles for exportation is enabled to increase domestic consumption just as much as if engaged in agriculture or home manufactures.

Upon the next page of that volume is found this sentence:—"If foreigners can beat us in our own [protected] markets, they can beat us elsewhere" *(Ib.* 537*)*; *a fortiori*, if we handicap our own competition.

Except one recently subsidized steamship line, our shipping has no governmental assistance. It competes with all the world unaided; but that engaged in foreign trade is largely devoted to the carrying of heavy or agricultural articles, especially our grain and petroleum. Its cargoes ought not to go forth burdened with a crippling domestic tax.

The opinion of the Court of Claims (Rec. pp. 20, 21, fol. 29) citing a case in which this Court reversed that, in the matter of a drawback, says "*revenue* is not the purpose of this statute" R. S. 3019. It proceeds to say that it was enacted as an exercise of the constitutional power to regulate commerce, citing Gibbons v. Ogden, 9 Wheat. 1. *That very case, however, explicitly declares that the laying of duties is a branch of the taxing power, as distinguished from the power to regulate commerce.* (9 Wheat. 201-2.)

Congress legislates in the the exercise of both these powers; if under the taxing power, it imposes a duty, and under the commerce clause declares that articles which go into foreign commerce shall be relieved of duty, it is erroneous to construe this latter provision as if it were an exercise of the power to levy a tax or duty on imports. In taxing, it taxes what it pleases, at what rate it pleases; but in exempting for commercial reasons, it regulates commerce.

The *direct* purpose of R. S. sec. 3019 was entirely (not "in part" merely, as the opinion, Rec. 21, says) to promote our export trade; if the exportation of the articles increased their manufacture, this was an incident to the main purpose.

There is absolutely not the slightest foundation for the next assumption of the opinion:—"The statute was not intended to encourage the importation of material to be used in manufactures when like material could be obtained in the United States." (Rec. 21.)

So far as Sec. 3019, and similar provisions, are concerned, the reverse is true: these could be framed for no other object than to encourage the bringing in of foreign material, for just the use to which we put ours, without reference whether they "could be obtained in the United States" or not. The art of man can conceive no other reason for thus allowing free entry. The made-up articles having to go into a foreign market, the paramount purpose of R. S. § 3019, etc., was to have them enter there at as little expense to our exporter as possible; by letting him procure the materials wherever they could be had cheapest.

The cited sentence of Arnold v. U. S., 147 U. S. 497, bottom, will be found by the context to refer solely to the provisions levying—and not to an exemption from—duty; to importations, not exportations.

VI.

R. S. § 3019 as a contract.

In its first drawback case, the Court of Claims considered it had not jurisdiction, because it considered the refund a "mere gratuity"; though it would have jurisdiction over a contract, express or implied. Campbell v. U. S. 12 Ct. of Clms. 470 and Durant v. U. S. 28 *Id.* 666.

This Court reversed the judgment, in Campbell's case, and held "the Court of Claims has jurisdiction of such a claim, (1) because it is founded on a law of Congress; and (2) because the facts found in this case raise *an implied contract* that the United States will refund to the importer the amount he paid to the government."

Campbell v. U. S. 107 U. S. 410, 411.

"The provision for the return of the duty upon a re-exportation formed a part of the system of regulations for importation and revenue from the earliest period of the government, and has always been understood *to establish relations* between the regular and honest importer and the government."

Bartlett v. Kane, 16 How. 274.

The suggestion we wish to make is this:—if the terms of the contract-relation between us and the United States had been written out; providing that if we imported materials, paid proper duties thereon, made them up into articles and exported the latter, in our proceedings conforming to all applicable treasury regulations, the duties so paid should be refunded;—it would not be competent for any court to add the condition that the materials must be such the like of which could not be obtained in the United States. (Rec. 21 mid.; Opin.) Under such provision we should get our refund or lose it, not according to what we had done, but according as proof might or might not be

made of the existence of "like" material in this country! If the condition could not be added explicitly, it is equally wrong, and equally injurious, to assume its existence in the Statute by construction, and give judgment against us upon that theory. It is like the collector's refusal to admit a horse to its right of free entry, because he did not consider it of sufficiently good strain; having first *assumed* the statute giving the privilege to be for the improvement of our stock, and then applying it accordingly.

Morrill v. Jones, 106 U. S. 466.

This court said:—

"This is manifestly an attempt to put into the body of the statute a limitation which Congress did not think it necessary to prescribe." (106 U. S. 467.)

Such limitations can no more by inserted by a court than by the Secretary.

A man brings in some material of his manufactures, intending to send abroad the completed article. What he imports, he exports in a changed form. If not intended to be consumed in this country, the ordinary ground of assessing duty is absent; *it is taken only provisionally, as a security that the intended purpose of re-exportation shall be executed;* in which event, the identical sum paid as duty (less a seigniorage to the U. S. for the trouble; see 1 Stats. 27, and all acts since) is returned to the very man who paid it, or his order. *If it were not promised, the goods would never have come into the country at all.* It is a form of free entry, adopted for the security of the U. S. from imposition. (107 U. S. 413.)

VII.

Erroneous construction of § 3019. Forced reading of its language.

Whenever a strained construction of a statute has to be contended for, not conformable to the obviously-apparent meaning of its language, it is always supported upon the hypothesis of some suppositious public policy.

Certainly, "the intention of the law-makers is the law"; but that we are to gather from the language they have chosen to signify it. "Courts cannot imagine an intent, and then tie the language of the statute to it."

Alexander v. Worthington, 5 Md. 472.

Suppose our tariffs to be usually framed with an idea to protect home industries; yet the intention is to protect them only just so far as a fair, natural interpretation of the statutory language has this effect.

Drawback clauses have never been intended as protective, as already shown; except to protect *exporter* in his competition in a foreign market.

Here, the erroneous imagining of an intent has led to a distortion of the words of the statute from their fair, natural, ordinary meaning.

(1). ARTICLES. The comprehensive meaning usually attached to the use of this word, especially as employed in tariff legislation, and as declared by this Court, is denied it in this section 3019, by the Court of Claims. (Rec. 19.)

Junge v. Hedden, 146 U. S. 239.

In this case, the Chief-Justice's opinion approves the reasoning of the Circuit Court. *(Ibid.)* Judge LABOMBE says; "It is not to be assumed that the same word is used in the statute with two different meanings, unless that is made clearly apparent by the

connection in which the word is used." (37 F. R. 198.) He refers to its use elsewhere in this act of 1883, and might have cited numerous other instances, showing the word articles (of itself) to have the same comprehensive meaning. *Additional words may qualify the right or duty* attaching to an article, according to its material, mode of transportation (in Am. vessels) place of shipment (this side of, or beyond, the Cape of Good Hope) or condition, etc.; but the word 'articles', *per se*, retains the same meaning. R. S. sec. 2496, relates to foreign articles, bearing a simulated trade-mark; sec. 2499 to those unmentioned, having a certain similitude; sec. 2500 to domestic articles exported; sec. 2502 to foreign articles imported, etc., etc.; but the meaning of the word 'articles' itself is shown (37 F. R. 198 and 146 U. S. 239) to be the same in every connection.

In short, any qualification fixing the rate of duty, the right of free entry, the condition of a refunding, does not change the meaning of the word 'articles' itself.

In the case mentioned (146 U. S. 239) that word was qualified, as to the attaching rate of duty, by the words "composed of rubber;" but that did not cause either court to restrict the meaning of 'articles' *per se*.

This court recognized that any such transformation as changed the identity, giving a new name, permitting a new use, created a new 'article' out of an 'article'; the latter being the material of the former. (146 U. S. 239.)

The sole question is whether what we exported answered the qualification.

(2.) MATERIALS. The Court of Claims thinks 'materials' in R. S., Sec. 3019, must not possess its ordinary meaning; obviously, to accomplish the conjectural and wrongly-imputed intent of Congress.

Accepting, as the *general* definition of 'materials' any "matter intended to be used in the creating of a

mechanical structure", citing Bonvier, 71 Pa. 293, and 36 Wis. 29, the Court of Claims, *admitting that the boxes we exported were 'articles manufactured', composed of imported materials*, deny that what we did with these importations was a manufacture here (presently considered, *infra*) and deny that these '*materials* imported' were '*materials*' "*within the meaning of this statute.*" (Rec. 19 bottom.)

Referring to these "*boxes* exported" as being "*articles manufactured*," the Court of Claims answers negatively its own question, "were *the shooks out of which they were made* 'materials,' *within the meaning of the statute?*" *(Ibid.)*

Indicating some uncomprehended distinction between the *making* of an article and its *manufacture*, it is easily seen that it assigns to 'materials' a meaning peculiar to this statute, and not accordant with the ordinary understanding of it, nor with the general definition they quote.

Although an anticipation, we will note here, that *the question whether these boxes were manufactured in the United States, is wholly controlled* (in the view of the Court of Claims, at least) *by the meaning attached by that court to the word 'materials' in this section 3019.* Giving the word its ordinary meaning and effect, we are entitled to a judgment; only by assigning to it a special meaning (to carry out an imagined intent) was that court led to dismiss our petition.

Its opinion proceeds:—

"We think *unmanufactured* 'materials' was intended; or, at least, 'materials' in *such an unfinished state* as to require the expenditure of a *material* amount of labor in the United States to prepare and shape the same for use." (Rec. 19, 20.)

This is the judicial annexation of another condition, as unauthorized as that the material must be unlike what could be obtained in the United States *(Ib.* 19, middle*)*; or as the requirement of improving blood in horses and cattle imported. (106 U. S. 466.)

Though the objection, that otherwise "the *mere* fastening together" here of imported materials might entitle to drawback has no application to this case, according to the findings' statement of what we did (including the fashioning of imported steel and iron bars into nails) we will meet it by recalling that, from the very earliest days, imports could be exported for drawback without a solitary thing being done to them, and with only the retention of one per centum, avowedly retained merely to cover custom-house expenses. (Act of 1790, § 3:—1 Stats. 181.)

Why, therefore, the fastening together, at however little cost, of materials, so as *in fact*, to create a new article, should not be allowed, we fail to perceive; especially, when ten per centum is paid for the privilege. But that inquiry, though suggested by the opinion, is entirely foreign to the case here presented.

Does this section 3019 mean *(without saying so)* "unmanufactured" (or raw) materials? "or, at least 'materials' in such an unfinished state as to require the expenditure of a *material* amount of labor in the United States." (Opin. Rec. 19, 20.)

If Congress meant 'raw' or 'unfinished' materials, no good reason is assigned for not saying so explicitly; nor can the court rightly add *this* condition, any more than the others it has created. That Congress did *not* say so, affords the strongest presumption that it did not so intend. No purpose subserved by *drawback* provisions would be accomplished by such a requirement. If the legislature (and not the court) had inserted it, it would have caused great uncertainty and confusion; not only as to whether the material imported was 'unmanufactured', but as to whether it was so far 'unfinished' as to require "a *material* amount of labor" to be expended upon it here.

If by 'unmanufactured' is meant 'raw material,' it would have to be ascertained what that term implies. The raw material of one manufacture is the finished

product of another; as warps, of a warp-mill; yarn of another mill; cloths of another; and wearing-apparel of another business; iron ore, pig-iron, bars, wire, nails, etc., etc.

Since framing our "propositions" *(ante*, pp.) we have found the remarks of Mr. Henry Baldwin, in reporting the bill of 1820, using the same illustrations. He remarked:—

"Iron is certainly an article of necessity, but not more so than clothing. It is called a raw material. We would as soon apply this term to a ball of cotton yarn, or a piece of broadcloth. The word *raw* material is strangely misunderstood. The glass-founder calls plain glass; the iron-founder, pigs; the rope-maker, hemp and flax; the copper-smith and brazier, brass and copper in sheets and still-bottoms—raw materials; while the makers of these articles call them manufactures, and petition for protection. I believe the safer rule is to consider that which is taken from the earth as the *raw* material; and *every* change in its *form* or *value*, by labor, as a *manufacture*."

Whatever the word 'raw' (applied to material) might import, there is no doubt that the 'material' of one manufacture is the finished product of previous manufacture; and Congress avoided all refinement and discussion by simply using the unqualified word 'material.' In sec. 3019 it is used antithetically to 'articles.' It there implies whatever is imported to be, and is, used to manufacture the article to be exported.

How absolutely antagonistic this theory of the Court of Claims is to the practical construction put upon the drawback laws can be seen by reference to the instructions and requirements of successive volumes of Treasury Regulations, and multitudinous decisions of that Department.

The tree felled in the Canadian forest is an 'article'; it is 'material' into which the 'article' logs can be

cut; these can be sawn into planks, bolts, shooks, etc.; thus, by successive operations, each article is used for material; and each production is a new and different article from the former, in ordinary language; in fact; so (of course) in law.

Consulting the dictionary we find material to be "the substance or matter of which anything is made, or may be made" (Webst. Int. Dict.); or, as the Century Dict. says, "that which composes or makes a part of anything."

This elaborate lexicon speaks of '*raw* material,' employing the illustration which occurred to us; "thus, wool is the *raw* material of yarn, and yarn that of cloth; iron-ore is the *raw* material of pig-iron, and pig-iron that of cast-iron." It next quotes this sentence from J. S. Mill;—"The currier and tanner find their whole occupation in converting *raw material* into what may be termed prepared material."

R. S. § 3019 does not recognize this distinction; it only asks that foreign material, of any sort, be here converted into a different article of exportation, to secure the promised refund; and it is futile for the Treasury to try and interpolate 'raw' before 'materials' as it was to attempt to require superiority of breed in imported cattle (106 U. S., 466–7).

Upon pages 80 to 82 of (the A. D. 1879 edition) Heyl's Digest, Part II, will be found the Treasury Department's list of the common articles upon which drawback refunds were paid, mainly where some 'estimate' was involved in their computation. It will be seen that this list is almost entirely composed of exports made out of prepared materials; out of imports which had been previously manufactured.

All that this section (3019) requires is the manufacture, from materials imported raw or prepared, of that article of exportation for the making whereof the importations were intended; for a certificate of the intention to manufacture and export has to accompany the original entry of the materials. The whole require-

ment is that something shall be manufactured out of the importations, and that something exported.

(3.) MANUFACTURED. Though the Court of Claims Opinion (Rec. 20 to 22) does not so explicitly, and in one distinct proposition, state that 'manufactured' means something else than it signifies in common speech, it does in effect so maintain, and argue it out at length, as controlled by *its* view "of the purpose of the statute under consideration" to "see if the articles manufactured come within its provisions" *(Id.* 20 middle*)*; that purpose being stated as "not intended to encourage the importation of material to be used in manufactures, when *like* material could be obtained in the United States." *(Id.* 21, middle.*)*

On the contrary, we acted upon and now maintain the hypothesis that 'manufactured' means, in sec. 3019, precisely what it means ordinarily, in every statute, and in common speech: viz., a transformation, so that the *article* becomes another and different *article* from that as which it previously existed; indicated by a new name, and subserving a new use.

That what we imported was the article, commonly and commercially, known as 'shooks'; that the article we exported was commonly and commercially known as 'boxes'; that there was a manifest transformation, giving the right to designate the result by a new name; that it was *not* effected by dovetailing, but effected by machinery, sawing, the use of nails, etc.; and *only* by such transformation and the use of additional material made to be receptacles of goods, is undenied. *This is 'manufacture.'* The amount of money invested (it was very large in our case, in factory, machinery, etc.) or of labor expended in the manufacture receives no attention from the law-giver, though the Court of Claims seem to consider it. (156 U. S. 604.)

We can say of these shooks, side and end and "bottom, thou art translated."

To this drawback statute's use of "manufactured," the remark of a famous English judge (HEATH) is applicable;—

"I approve of the term 'manufacture' in the Statute, *because it precludes all nice refinements;* it gives us to understand the *reason* of the proviso, that *it was intended for the benefit of trade.*" Boulton v. Bull, 2 Hy. Bl. [482.]

In short, "Manufacture is *transformation.*"

Kidd v. Pearson, 128 U. S. 20.
U. S. v. E. C. Knight, 156 *Id.* 14.

It has been repeatedly decided under the tariff acts, that where an article has been advanced through one or more processes into a completed commercial article, known and recognized in trade by a distinctive name other than the name of the material, and is put into a completed shape designed and adapted for a particular use, it is deemed to be a manufacture. It is sufficient to refer to Hartranft vs. Wiegmann, 121 U. S., 609; Schriefer vs. Wood, 5 Blatch., 215; Stockwell vs. U. S., 3 Clifford, 284.

Erhardt vs. Hahn, 14 U. S. Ap., 120.

Judge LACOMBE epitomizes the Supreme Court decision above cited (121 U. S., 609), showing that it lays down "the rule that, to constitute a 'manufacture' there must be a *transformation*"; so that "the article becomes commercially known as another and different article from that as which it began its existence."

Foppes v. Magone, 40 F. R. 572.
Mayor v. Davis, 6 W. & S. 279.

No matter how trifling the act which effects the change. Merely causing, or permitting, gum to run and harden into a form adapting it to use, as a shoe, was held to be a 'manufacture', affecting the article with duty; "*because* it had been *put into a new form*, capable of use and designed *to be used in such new form*" (121 U. S. 615.)

Lawrence v. Allen, 7 How. 785.
Seeberger v. Castro, 153 U. S. 35.
Wooton v. Magone, 54 F. R. 675 bot.
King v. Wheeler, 2 B. & Ald. 350.
Stockwell v. U. S. 3 Cliff. 288–9.

U. S. v. Sarchet, Gilp. 275.
Holden v. Clancy, 58 Barb. 597.
Dudley v. U. S. 74 F. R. 549.

The meaning thus judicially assigned corresponds with that given by lexicographers.

Manufacture (as a *noun*).

(I.) "The operation of making *goods* or *wares* of any kind; the production of articles *for use*, from raw or *prepared* materials by giving to these materials new forms, qualities, properties or combinations, whether by hand-labor or machinery."

(As a verb) (1.) "To make or fabricate, as anything *for use*, especially in considerable quantities or numbers, or by the aid of many hands or by *machinery*; work materials *into the form of*; as, to manufacture cloth, etc.," &c.

(3.) "To use as material for manufacture; *work up into form for use*; make something from; as, to manufacture wool into cloth," etc.

Century Dict.

Manufacture: "a term employed to designate the changes or *modifications* made by art and industry in the form of substance of material articles in the view of rendering them capable of satisfying some want or desire of man." . . . . "Manufacturing industry consists, in fact, in the [there thus italicized] *application of art, science and labor to bring about certain changes or modifications of already existing materials*; and its varieties depend wholly on the modes in which this application is made."

Brande's Encycl. 715.

HALL, J., observes that

"When great quantities of salable articles are produced, even by a single operation of a very simple machine, we frequently, if not ordinarily, speak of the operation as a manufacture. When large quantities of kindling wood are made by splitting blocks of wood by machinery adapted to that special purpose, we do not hesitate to speak of it as a

manufacture of kindling wood," etc., etc., adding many familiar instances of like things.

Schriefer v. Wood, 5 Blatch. 216–7.
Seeley v. Guillem, 40 Ct. 106.
Birtwell v. Saltonstall, 39 F. R. 384.
U. S. v. Leigh, 41 *Id.* 33, 34.

"Not only is the merchandise not commercially known as metal thread, nor as bullions, but the process of manufacture to which the metal thread of the cotton cables have been subjected have advanced them beyond their original condition into a new and distinctive article of commerce, with a specific trade name, viz., 'Soutache gilt braid.' Of such braids, as of the velveteen dress dress facings, which were before this Ct. in U. S. vs. Kursheedt Mfg. Co., 14 U. S. Ap., 35, it may be said that 'they have lost their commercial identity [as shooks] and have been advanced to a form in which they have acquired a new commercial name [boxes] and are adapted for a distinctively new use.'"

Wolff v. U. S., 35 U. S. Ap. 835.
U. S. v. Rheinstrom, 31 *Id.* 274.

There is no reason or propriety in assuming that the classification of the *same* article is one thing when imported, and another when exported. Upon its original entry, the question is, what tariff clause names the import? Upon entry for exportation the question is, what term properly designates the article?

Numerous decisions, of this and lower courts, declare the classification for duty depends upon the character of the thing as imported. Parity of reasoning refers the right to refund to the nature and classification of the thing exported:

"In order to produce uniformity in the imposition of duties, the dutiable classification of articles imported must be ascertained by an examination of the imported article itself, *in the condition in which it is imported.* In order to be dutiable as 'watch *materials*,' the article, when imported, must be in such form of manufacture as to show its adaptation to the making of watches. [There is no duty laid upon 'box *materials*,' as such; any more than upon 'glove *materials*,' or 'shoe *materials*,' as such.]

The article in question was, to all intents and purposes, RAW MATERIAL. If it were to be classed as 'watch materials', it would follow that any metal which could ultimately be used, and was ultimately used, in the manufacture of a watch, but *could* be used for other purposes also, would be dutiable as 'watch materials'. In order to be 'watch *materials*', the article must itself bear marks of its special adaptation in making watches. *The fact that the article in question was used in the manufacture of watches has no relation to the condition of the article as imported*, but to what afterwards the importer did with it."

Worthington v. Robbins, 139 U. S. 341.

It will be noted that Judge BLATCHFORD deemed these importations, practically, "raw", and not 'prepared' materials; but section 3019 makes no such distinction; it covers everything imported that is a material of the thing exported. (See, *ante*, p. 40.)

Gun-stocks, with locks and mounts, intended to be united with gun-barrels imported "by another shipment" were held by Circuit Court, affirmed by this court, to be dutiable only as manufactures of metals, etc., not as 'guns.' The Collector and Board's decision, assessing them as "breech-loading shot-guns." was reversed.

"The dutiable classification of the gunstocks imported must be determined by an examination of them *in the condition in which they are imported.*" (146 U. S. 82 top.)

"The intent of the importers to put the gunstocks with the barrels separately imported, *so as to make* HERE *completed guns for sale*, cannot affect the rate of duty on the gunstocks as a separate importation."

U. S. v. Schoverling, 146 U. S. 81., affirming 45 F. R. 349; and citing
Merritt v. Welsh, 104 U. S. 694,
Robertson v. Gerdan, 132 *Id.* 459.
139 U. S. 608 and 612.
U. S. v. Breed, 1 Sumn. 166.
Saltonstall v. Wiebusch, 156 U. S. 604.

"It is not material that they can be converted into the dutiable article by mixing them with other ingredi-

ents, and subjecting them to the various processes bestowed upon that article, *or even by advancing them a single step in the process of preparation.*

The law deals with them as they are, not as they can be made to be."

Cruikshank v. U. S., 20 U. S. Ap. 234.

The charge of a purpose to defraud the revenue, made in the gunstock and sugar cases, does not lie against us; for, upon our original entry we had to declare our purpose to export; and indicate that we *then* claimed the benefit of the promise given by sec. 3019.

The Court of Claims opinion (Rec. 22 top) states that shooks are classed with casks, barrels and packing boxes; but the true inference is that articles are differentiated from each other, not confounded, by such specific designations. Thus worsted was made to differ from wool, etc. *Ex gr.*, in this statute (22 Stats. 494) enumerating together "all barks, beans, berries, balsams," etc., emphasizes, instead of obliterating, the obvious distinction between these articles. So "alumina, alum" etc. *(Id.* 492.*)* and scores of other enumerations.

(4.) WHOLLY. If the transformation of our imported shooks and bars into boxes was a "manufacture", there is no dispute that this creation of a new article was 'wholly' performed in the United States. Yet it may not be improper to show that 'wholly' was intended to apply to the materials used. That the use of them, to make an exported article, if drawback was to be claimed, must necessarily be in the United States is a fair implication from the entire drawback statutes, system, and regulations; not from this word, as the Court of Claims construe it.

The required entry of the article imported, and export entry of the thing exported, necessitates the making here of the one article from the other; and that is *all* that is required.

Our objection to the misapplication of the word is, that it is used, after being perverted, to emphasize the ground of the Court's determination that the shooks (without the nails) were partly-manufactured boxes: the Treasury says 'complete'! (Rec. 15.)

Looking at R. S. secs. 3019 and 3020 together, we find the former relates to articles wholly of foreign material, and the latter to those partly of domestic material. Morgan's Tariff (1891 ed.) 295.

Treasury Regulations of 1884, p. 419, par. 971, after reference to Secs. 3019 and 3020, says that in no case, except one coming under this latter section, "can drawback be allowed *unless the manufactured article be composed wholly of imported materials.*"

There is not the slightest obscurity or ambiguity about section 3019, just as it reads. If the court's interpolation injects any, it is removed by disregarding such interpolation.

If, as previously suggested, what we did with the shooks and bar iron we imported constituted the manufacture of boxes, then any discussion of the application of 'wholly' is superfluous, and will not be further pursued here: as, denying the application now given it, we declined to argue it below, as immaterial. It is only the use made of the interpolation, *arguendo*, in the opinion that needs us to touch upon it at all here.

We will, however, add a few illustrations of what the Treasury Department deems to be *a manufacture*, here, of imported materials; what it holds, indeed, sufficient to make the product 'wholly' manufactured here.

We will first quote, entire, the ruling as to imported glue simply powdered here; because it touches the use made by the court of its quotation (Rec. 20, middle) that shells, cleaned and polished by grinding," are still shells, *because* they had not been thereby "manufactured into a *new* and *different article, having a distinct-*

ive name, character, or *use* from that of a shell." (121 U. S. 609.)

"TREASURY DEPARTMENT, April 18, 1883.

SIR: The Department is in receipt of your letter of the 5th instant, covering an application of Messrs. Wahl Brothers for drawback on "glue sizing", manufactured by them from imported glue.

Upon an examination of the samples submitted with the application it appears that the *process of manufacture consists in grinding the imported cakes or blocks of glue into powder, in which form it is exported* under the name of glue sizing.

The Department concurs in your opinion that this manufacture is similar to that of flour from imported grain, upon which drawback is allowed under the provisions of section 3019 of the Revised Statutes, and you are hereby authorized to allow on the exportation of the article in question a drawback of the duty paid on a quantity of the imported glue equal in weight to the net weight of the exported sizing, less the legal retention of 10 per centum."

Sustaining this view, see *Glue Co. v. Upton, 97 U. S. 6.*

Grinding grain into flour is a manufacture, so recognized by the Department and the court. Judge COXE casually remarked, as undeniable;—

"As well might one allude to flour, or bread, as being the same thing as wheat, because they are made of wheat." He added;— "In short, it is changed into a new and different article, having *a distinctive name, character* and *use.*"

In re Irwin, 62 F. R. 152.
Citing 121 U. S. 609, and
Erhardt v. Hahn, 14 U. S. Ap., 120.

The opinion in the case last-cited observes;—

"It has been repeatedly decided, under the tariff acts, that where an article has been advanced through one or more processes into a completed commercial article, known and recognized in trade by a specific and distinctive name other than the name of the material, and is put into a completed shape designed and adapted for a particular use, it is deemed to be a

manufacture. It is sufficient to refer to Hartranft v. Wiegmann, 121 U. S. 609.

Erhardt v. Hahn, 14 U. S. Ap. 120.
Re Smith, 50 F. R. 601, affirmed in
Smith v. Rheinstrom, 13 C. C. Ap. 262.

The opinion (Rec. 20, middle) refers to 121 U. S. 615, as showing that grinding—*as a method of cleansing and polishing, however*—is not a manufacture; the case of Worthington v. Robbins, 139 U. S. 337, where the necessity for grinding and pulverizing a previous manufacture, to convert it into 'watch materials,' determined its classification, is not there mentioned.

Grinding glue or grain does the same. (See *Supra.*)

The question is one of effect. No matter what the process is—grinding, pulverizing, hammering, nailing, or sawing—if *the result* is a new article, bearing a distinctive name of its own, answering a new use, it is a manufacture of the new article; as stated in 121 U. S., 615, and many other cases we have cited.

Recurring to the circumstance that we imported the rods and made the nails, to make these boxes, we note that, while polishing shells leaves them shells, an addition of a new element, to make a thing susceptible of a new employment, does change its classification. Junge v. Hedden, 146 U. S. 239, at end of Opinion. If grinding makes that 'edible' which before was not, it changes classification (20 U. S. Ap., 234).

The Treasury Department holds that scarfs made by cutting imported lace into strips, hemming them, and putting on some tinsel, *is* a manufacture entitling to drawback. (SS. 7090, Aug. 28, 1885.) Hardly so useful a manufacture as making boxes to transport our native products to distant lands!

"SS. No. 8744. *Treasury Department.*

MARCH 22, 1888.

SIR.—On the exportation of embossed tin plates, wholly manufactured from imported tin plates, a drawback will be allowed of the duty paid on a quantity of the imported plates used in the *manufacture* equal to

the net weight of the exported embossed plate, less the legal retention of ten per cent.

Respectfully yours,

I. H. MAYNARD, Asst. Secy."

Mr. Maynard was, soon after, a judge of the Court of Appeals of this State.

How a tin plate plain, by being embossed merely, becomes any more of a "manufactured" article than making boxes out of shooks and iron, separately imported, we are at a loss to perceive.

Mr. Maynard also said (Mar. 12, 1888; SS. 8723);—

"On the exportation of goat-skins prepared in the United States, by cleaning, dyeing and re-sewing, from tanned China goat-skins, a drawback will be allowed equal to the duties paid on the imported skins, less the legal retention of ten per cent."

June 17, 1868; cutting over, re-sewing, and re-making of second-hand sacks and bags constitutes them 'manufactures of the United States. Heyl's 1879 Dig., par. 154, note.

By Secretary Fairchild:—Copper wire to be brazed and redrawn. April 10, 1888; last three lines of SS. 8772.

NAILS FROM IMPORTED STEEL SLABS; "the quantity of the material so used being determined by adding to the net weight of the exported rails 7½ per cent. of such weight." SS. 8838, May 15, 1888; SS. 8424; "same *rate*" SS. 9117, Nov. 16, 1888; SS. 9193, Jan. 11, 1889; SS. 9360, March 21, 1889 (Hugh S. Thompson, Asst. Secy.): so, Mr. Tichenor, as to rivets, adding 3%. SS. 9394 May 23, 1889.

This explains the meaning of 'rate', as used in SS. 9540 (reversing SS. 3506 and 3541). SS. 9540, July 31, 1889, is the letter given in finding ¡VI (Rec. 15) where the number and *the title given it by the Department* are omitted. The title is;—"Drawback on *boxes, made from imported shooks*, cannot be allowed."

The treasury department established a list of "Drawback rates", published in Heyl's Digest, with its sanc-

tion. It names, *inter alia*, 'Bags from jute and burlap (91 U. S. 363 bottom); *dressed skins, from raw;* flour, from wheat; packing, from jute yarn; *rice, cleaned from paddy rice*, 1⅞ cents a pound—*cleaned from rough rice*, 2½ cents per lb."; etc., etc. Thus, *this* cleaning and polishing is treated as 'wholly' manufacturing the cleaned article here.

See, as to cleaned rice, from Siam paddy, SS. 19165, March 31, 1898.

IX.

A Euphemism.

Not only does the title to S. S. 9540 speak of "*boxes made from imported shooks*," but finding VI (Rec., 15) says drawback had been paid upon "boxes *made* from imported shooks, fastened together with nails made from imported steel rods as aforesaid;" while finding IV *(Id.* 14*)* states that, "at claimant's *factory* in Bayonne" the shooks we imported were "*constructed* into the boxes or cases set forth. . . by nailing the same together with nails manufactured in the United States out of the steel rods imported as aforesaid, and by trimming when defective," etc., as is more particularly recited in the next paragraph of finding IV (Rec., 14.)

With relation to such methods of producing boxes from shooks and steel rods, we fail to perceive the difference between saying the boxes were 'made', or 'constructed', or 'fashioned', from these materials, and saying they were 'manufactured' from them.

Yet, upon such an imaginary distinction the Court of Claims decides that, after we had paid the United States nearly $40,000 upon our faith in the promise contained in R. S. sec. 3019, we cannot have back the specified ninety per centum of the duty paid (leaving

nearly $4000 to the United States, for the privilege of employing our own factory and operatives, in doing the work here) because we 'made', or 'constructed' the boxes, instead of 'manufacturing', them!

Having held 'materials' to imply "*unmanufactured* materials," or such as would require the expenditure of a *material* amount of labor upon them (Rec. 19, 20) that assumption is repeated *(Id.* 22 top*)* by saying Congress did not intend "materials imported in *such an advanced stage*, as *the shooks* were in this case." It concedes they were still 'shooks'; entered as such; nearly $40,000 of duty paid upon them under that name and classification; but the court thinks the shooks too well prepared for the use for which they were imported to be considered 'materials' for that use!

The cases cited as to grinding glue, flour and pepper and watch enamel; resewn bags; cleaned rice, etc., etc., answer this proposition.

March 17, 1898, the Board of General Appraisers, following the Circuit Court, decide that while gunblocks planed on *both* sides are not entitled to free entry under Act of 1897, par. 699, yet such planing "does not make of them *gunstocks*, either wholly or *partially* manufactured." The assessment of them as such stocks was reversed, and they were held dutiable only as manufactures of wood. (SS. 19128; G. A. 4101)

U. S. v. Windmuller, 42 F. R. 292.
Dean Oil Co. v. U. S. 78 *Id.* 468.

X

Treasury decision, SS. 9540.

(Record, 15.)

The Treasury Department and the Court say we did not manufacture anything here, "because the *shooks* were complete *boxes* of foreign manufacture when imported," etc.; *i. e.*, "they were not 'materials' *within the meaning of the statute.*"

(This is quoted from the government's brief in the Court of Claims.)

Whenever the Chief of a Department Division involves the law-officers of the United States in the maintenance of some untenable proposition, the latter are constrained to speak of the purport of ordinary language as "not within the meaning of the statute" —as if it there means something very different from what it would anywhere else! The words 'articles,' 'manufactured' and 'material,' not being technical, mean in Sec. 3019 just what they imply in any other writing, or in common conversation. In the absence of any *proof* of a restricted or varied meaning, such is the legal presumption. (16 How. *261; 109 U. S. 132. 138 top.)

In the repetition of the statement of the government's position, the defendant's argument (as stated in its brief below) is that the importations were not 'materials', "because the *shooks* were completed *boxes* of foreign manufacture when imported."

The very statement is *felo de se;* for 'shooks' are not 'boxes', nor are "completed boxes" any longer "shooks."

Commercially and in common parlance, they are distinct things; each designation conveying its own different idea to the mind.

Treasury circular 9540 (Rec. 15) referring to the

drawback established "on *shooks* used in the manufacture of boxes" constrains the defendant into its position, that "the shooks are complete boxes", etc.; and compels the argument that the nailing of them together here is "*not a manufacture*, within the meaning of Sec. 3019."

Whatever constitutes a manufacture to the common apprehension, outside of Sec. 3019, is a manufacture within the meaning of that section. It has no special or peculiar significance there. Its definition, there or elsewhere, is not far to seek, nor hard to find. The true definition has been announced, authoritatively, to us; and, prior to the present judgment of the Court of Claims, there has never been any *judicial* definition which would not clearly bring what we did to these imports, before exporting them, within the ordinary scope of the term. No other court has ever injected an inquiry as to the absolute or relative cost of the manipulation into the question whether the process was a manufacture, and its product a manufactured article. We have no occasion to fear any such inquiry; but it is manimanifestly irrelevant. In *form* compelled to admit this, by Saltonstall vs. Wiebusch, 156 U. S., 604, in substance and effect it is denied by the opinion below. We have proved that we expended upon these shooks one-fifth their value; if this does not suffice to constitute manufacture, what proportion does? How vulgar, or how large, must be the fraction?

No such test is applicable. (156 U. S. 604.) The true test is (as we have seen) *transformation;* the manipulation of an article, or articles, having its (or their) own denomination into another article distinguished in common and commercial language by its own distinctive name, indicating a different thing. Here, we gave the export not only its right to such distinctive name, but a capability which the imports did not possess. The shooks were not united together; had no connecting bond; the boxes were firmly nailed, and so trimmed that they safely carried American products to distant lands.

There is nothing more involved in the word "manufactured". Gibbon says (VI Decline, etc., Am. ed. of 1826, p. 420) "The value of any object that supplies the wants or pleasures of mankind is compounded of its substance and its *form*; of the materials and *the manufacture.*"

The manufacture is simply the form given to the materials.

As argued for the United States, sec. 3019 is part of a statute relating to commerce; dealing with imports and exports—; but what is the *commercial* meaning of 'manufacture'? Let this Court further answer.

"*Any change in form* from a previous condition may render the article new in commerce; as powdered sugar is a different article in commerce from loaf sugar, and ground coffee is a different article from coffee in the berry". Glue Co. s. Upton, 97 U. S. 6.

Judge HEATH, immediately after the remark before quoted from him observes;—"It ought to be that which is *vendible*, otherwise it cannot be a manufacture." (2 Hy. Bl. [482].)

"If an article has obtained in common parlance a particular name, it is erroneous to describe it by the name of the material of which it is composed." Com. v. Clair, 7 Allen, 527.

That is, it is an abuse of language to speak of four separate bundles (1) of ends (2) of sides (3) of tops, and (4) of bottoms (Rec. 14 middle) as constituting "complete boxes", or "boxes manufactured complete," *except* nailing. It would be just as sensible to speak of a piece of heavy cloth as complete overcoats, *except* cutting out and sewing.

"Driving nails into shooks" (the statement of U. S. brief below), *per se*, may not, "in law or in fact" if there is a difference between the legal and actual meaning), be regarded "as the manufacture of a packing box;" but if the nails are so driven into the ends of the shooks as to attach two ends to two sides, and to these

a bottom and a top so as to form a rectangular receptacle, then we must submit this *is* making a box out of the shooks ; if not, *a fortiori*, the mere tying up of a lot of ends into one bundle, sides into another, tops into a third, the bottoms into a fourth, is *not* making a box.

We imported a well-known article of commerce (shooks) generally made in mills or factories specially devoted to their production and sale *as shooks*, which are ' vendible,' and commonly sold and shipped abroad in that shape and under that specific name ; and, from this well-known commodity, by the application of expensive devices and machinery, devised for this special purpose, and the use of nails made from imported rods of iron or steel, we made another equally well-known commodity (boxes) having its own distinctive name, form, character and purpose. If this is not ' manufacturing,' this last-mentioned commodity from the first, so as to satisfy every meaning possible to be assigned to the word ' manufactured," we cannot imagine any proceeding that would satisfy it, though there are more costly and tedious processes of making up more refractory material.

Treasury Circular 9540, and the argument here in its support, rest upon the maintenance of the position that bundles of side-shooks, end-shooks, etc., are " boxes, completed."

In one sentence, the circular says " that the boxes are made complete in Canada, *with the exception of nailing*," etc.

What was done in Canada was not of the slightest use, or susceptibility of use, as a box, because it was *not* ' completed,' practically or otherwise. In actual practice, it would contain nothing.

These adverbs, ' practically ' and ' substantially ', (Rec. 14, finding III) indicates an opinion, rather than state a fact. What one man might deem substantial completion, another would not. The shooks were completed, substantially and practically. The boxes

were not even begun; they were "*without form* and void". What was to be done was of the very essence of the whole business. It is a solecism to call some bits of board a box, when there exists only the potentiality of using them to make a box, by the preparation and addition of other material, and the application thereto of expansive machinery and further labor; when they are merely of such substance and form as to adapt them for use only as part of the material to be consumed in that process of manufacture absolutely necessary to the production of a box.

XI.

The Manufacture not so simple.

While the simplicity or complexity of the operations performed has naught to do with the question whether or not they constitute manufacture—which is to be determined by their *effect*—yet it is well to note that what was done here to convert the imported into the exported articles was by no means so simple a matter as is assumed by the Treasury Circular and in the Court of Claims opinion.

It is always easy, by choosing the form of expression, to belittle even the grandest operations, physical, mechanical or intellectual; still easier verbally to depreciate those of far less degree, and of everyday occurrence.

Disregarding its *effects*, the earthquake at Lisbon (or, later, at Java or Charleston) was but a temporary local trembling of the earth and commotion of its waters. A visitor to the Roman studio of an eminent American sculptor expressed his contemptuous opinion of this 'sculpin' business by saying it was only

taking a piece of stone and "knocking off what you don't want"—the greater portion of this 'knocking off' being done by workmen hired for the purpose. It was this simple process that produced the Greek Slave in the Corcoran Gallery and the pillars around the Treasury Building.

Having in mind so loose a garment as a cloak, it would be easy to write that a sufficiently large piece of suitable cloth was 'substantially' or 'practically' a cloak;— was a cloak, "excepting" the putting into that form and sewing together; just as easy as it is to say loose shooks are boxes *except* the nailing into that form and the trimming into a commercially fit condition for exportation.

One indulging in that turn of thought, and mode of reasoning, might declare one of Murillo's pictures 'substantially' or 'practically' done, so soon as the canvas was stretched upon the easel, and the colors spread upon the palette. It was then done, "*excepting*" the putting the colors and the canvas together in the intended form.

In every one of these instances, it is the employment of the prepared means, the combination of the prepared substances, that creates the thing finally produced.

From the defendant's cavalier manner of speaking of the claimant's work, it might almost be inferred that from these several piles of Canadian end-shooks, sides, bottoms and tops, brought into the same room in our factory, "completed boxes" rose like an exhalation, the fortuitously-present nails slipping into their places, like the stones in Aladdin's palace, so "no hammer nor tool of iron was heard in their building." (1 Kings, VI, 7.)

Four piles of loose shooks (no one shook of them as yet selected to be joined to any other individual piece) and a keg of nails, together in a room, or while yet in countries alien to one another, considered to constitute

an indeterminate number of boxes, 'substantially' or 'practically':— why, this is nonsense, indeed! but it is very serious nonsense to us; of a kind that keeps us for years out of our money, while we are denied interest.

Those piles of shooks might have lain there till they rotted, with out being *capable* of being made up into boxes, had not nails been provided for their manufacture.

The Court of Claims entirely ignores this circumstance. Nails are so incidental as to be unworthy of a thought! Yet they could not be picked up anywhere. To entitle us to drawback, they must come from abroad, either as nails or in some earlier form of metal. In fact, it was rods that were imported, and the nails made from them; but this process of manufacture, incidental and absolutely essential to that of the box (as much so as the existence of the shooks) receives no attention from the Treasury Department, or the Court of Claims. No matter "what anvils rang, what hammers beat, in what a forge, or what a heat" they were produced, nor at what labor or cost: in the eye of the Court of Claims and of the Treasury Department, they are no part of a box, nor necessary to its existence; but the shook is the only thing; that is the box, 'completed', or 'practically', or 'substantially' so. Yet the United States received very nearly $1,000 duty upon these bars, to say nothing of their prime cost or of the sums subsequently expended upon them before, as nails, they became part of these boxes.

Shooks and nails being provided, putting them together to make boxes is by no means the trifling matter the government assumes it to be.

Because it could be so much cheaper, quicker and better done this way than by hand, an expensive plant was erected and maintained expressly for the manufacture of these boxes, with nailing machines, sawing machines, bottoming machines, etc.

Treasury ruling 9540, which has kept us out of our money since 1889, *assumes* that the shooks come in such uniform lengths as to fit each other so exactly as to make a commercial, exportable, box by mere nailing; and any evidence overthrowing this assumption has to be ignored, since it cannot be contradicted. If facts conflict with a Treasury theory and ruling, so much the worse for the facts—as we have found, to our exceeding cost.

The metal, imported in rods, going out as nails; if it be admitted or established that the shooks have to be worked over, in making a box, where is the Government's theory and defence? The only resource is to deny that fact argumentatively, which cannot be denied evidentially.

The detail of what we did is in the last paragraph of finding IV. (Rec, 14, fol. 24.)

As to the immaterial question of the actual or relative cost of these operations; we figure it at a fifth (say) and the United States at a tithe of the value of the boxes:—very well! there is not the slightest ground for the assumption that Congress intended the manufacturing to be done here should exceed ten per cent. of the value of the export, or to prescribe *any* relative proportion. (156 U. S., 604.)

Take the case that came before this Court, (107 U.S.):—there is no reason to suppose—certainly, nothing in the reports to show--that the mere application of such pressure to the linseed as to express its oil cost ten per cent of the value of the oil and cake. That was an instance of the separation of constituents, ours one of the combination of them; and the latter is certainly as much an act of manufacturing as the former.

We might run through the whole list of drawback articles in Heyl's Digest for 1879; *ex. gr.*, there is no reason to suppose that the cost of sewing jute cloth, or burlaps, up into bags exceeds one-tenth of the value of the bag; or re-sewing old bags; or grinding glue; etc. etc.

XII.

The chair case. 149 U. S. 346.

There is nothing so sure to mislead as a false analogy.

Some subordinate, or special agent, led the Assistant Secretary off upon a false scent by mis-stating to him the purport of the case as to bent-wood furniture, Hedden v. Richard, 149 U. S. 346.

As the report and transcript of that case show, the importations there involved were chairs in pieces;—

These pieces were the back, side and seat (each of which was *in permanent form*, ready to be put together as part of the chair) and the legs, ring, and braces were each of them completely shaped, smoothed, and fitted one to another, *varnished* (or painted and varnished) and with all the holes therein for the necessary screws for fastening or putting the same together, *and were accompanied by all such necessary screws and bolts*, so that all these pieces were entirely ready and in a condition to be put together, and to constitute a completed, ordinary, bent-wood chair." (Trans. of case, No. 208, Oct. T., 1892, page 8 middle.)

It further appeared that the chair was "set-up" (*i. e.* all put together, in perfect shape) and varnished (or "finished", as it was termed) and then afterward "knocked down" (or taken apart) and its pieces, with the screws, bolts, etc., all made up into one parcel for importation into this country. (*Id.* p. 11).

But it was further proved;—

"That the term 'finished' had, in the furniture trade in this country, on and prior to March 3, 1883, *a particular trade meaning;* that it meant the chair had been painted and varnished . . . . . that, when put together, the trade knew it as 'set up and finished' or as a 'finished set up chair' and when taken apart and the pieces made up into a parcel as a 'finished knocked down chair". (*Id.* pp. 11 and 12.)

The collector classified the chairs as "furniture finished". The importer claimed they were dutiable as "furniture in piece in rough, and not finished".

The Circuit Judge, thinking the Statute did not intend any technical meaning, and that the furniture would not commonly be considered "finished", directed a verdict for the plaintiffs, Richard & Boas.

This verdict the Supreme Court set aside, *solely upon the ground of the disregard of the undisputed testimony as to trade usage;* saying that if the furniture trade deemed these chairs "finished," they should be dutied accordingly, whether finished or not within the common understanding of the term.

And this is *all* there is of "the bent-wood furniture case," which has been assigned as the ground for not paying us our money according to the statutory contract. (see 149 U. S. 346 to 350.) The Court did *not* declare these chairs 'finished,' but said the jury should have been allowed to consider trade usage.

No witness has testified that in the shook-trade, or box-trade, some piles of end-shook, side-shook, etc., are known as boxes. If one did, he would discredtt himself without establishing the fact; for the contrary is a fact so well known as to be of judicial cognizance. Everybody knows that our importations from Canada, as imported, are bought, sold, shipped, invoiced and way billed simply as "shooks."

They do not come as these chairs did, individualized, each in its own separate parcel, complete, "with all necessary screws", etc.; but a mass of ends, of sides, of tops, of bottoms; from which masses pieces are fortuitously taken, in constructing a box, and are made to conform to each other by the adjustment and trimming of machinery.

XIII.

Preparation of the shooks is not manufacturing boxes.

Fabrication of the 'material' is not manufacturing the 'article.'

Obvious as the statement of the above heading seems, it has to be negatived by the Court of claims, to sustain its judgment; the fallacy of the reasoning indicates the unsoundness of the judgment to which it leads.

The opinion argues thus:

[We number the several paragraphs for convenience of comment.]

(1.) "The *shooks* having been prepared in Canada complete for use, can it be said that the *boxes* fashioned therewith were manufactured in the United States. We think not.

(2) The preparation of the *material* was not only necessary *to make the box*, but was an essential and inseparable part of the manufacture thereof; for the reason that the box could not have been otherwise manufactured.

(3) *Material* cannot be transformed or fashioned 'into a change of form for use' without undergoing the process of manufacture necessarily incident to the *article manufactured;* so that *the manufacture of a box necessarily includes*, AS A PART THEREOF, the manufacture or *preparation of the materials* therefor.

(4.) We are *therefore* of the opinion that *the manufacture of the boxes* began when the *materials* were prepared and shaped for the purpose in Canada. The utility of the material was thereby limited to the purpose for it was prepared; and in this respect is unlike the case of Worthington v. Robbins, 139 U. S. 337." (Rec. 22, fol. 30.)

Their conclusion is that the transformation into a box began in Canada. *(Ib.)*

We say, the transformation in Canada was that of lumber, the *material* for the article 'shook' into the *article* 'shook.'

If the court's reasoning is wrong, its conclusion is: we endeavor to show both to be so.

[Mem. The italics in the above quotations are ours.]

COMMENT. (1.) The theory of paragraph of the foregoing quotation which we have numbered (1) is that the completion of the 'material' shooks is, *ipso facto*, a commencement of the manufacture of the 'article' boxes. The reply is that it is the completion only of the very thing completed, *i. e.* shooks. Is is the preparation of the *materials;* not any part of the manufacture of the *article* into which they are to enter. *The 'use' for which these shooks were prepared in Canada was the ordinary use of shooks*, as such, so known as an independent article of commerce; so recognized in the tariff clause under which we paid duties upon them.

(2.) That preparation of the material (mentioned in the next quoted paragraph, 2) is essential to the making of a box is a truism as applicable to every other conceivable article as to our boxes. The providing of materials is an inseparable condition attaching to every manufacture into which they enter; as *any* manufacture is impossible without first providing materials therefore. The statute, sec. 3019, evinces no purpose to deny the importing manufacturer the employment of the materials most convenient and available for the manufactured article to be made for export.

(3) The statement of the next paragraph (3) that the making of a box necessarily requires the preparation of materials, because *no* material can be fashioned into new form except by manufacture, is obviously true as we here state it, and of universal applicability: so that, if this truth excludes our boxes from the benefit of sec. 3019, it excludes practically every other manufactured material and renders the law of no practical benefit to anybody. The error of the opinion is that it infers from the absolute necessity for materials (manufactured

materials, if you please, so made as to be adapted to a particular use) that the preparation of such 'materials' is "part of the manufacture" of the article made therefrom. This deduction nullifies sec. 3019. The proposition from which it is deduced is equally true of every material and of every article possible to be made; so the deduction could apply to all, if, any.

Certainly, this argument is just as applicable to the nails as to the shooks. They were equally indispensable to the manufacture of the boxes. The preparation of the iron or steel, in Norway or Sweden, was as essential to the manufacture of the nails (hence, accaccording to the Court of Claims was "a part of the manufacture" of the nails) as shooks are to boxes. This sort of argument necessarily leads back to the position of the Court of Claims (Rec. 19 bottom) that 'materials' in Sec. 3019 intends only "*unmanufactured* materials." If this conclusion is untenable, the whole argument falls with it.

Sec. 3019 contemplates the bringing in of *the* 'material' intended to be used in making *the* 'article' to be exported. It confines its beneffts, practically, to the importation of *such* material. It is denying the statute any real force or effect, to construe it as not permitting the importation of *such* material as is *suitable* for the manufacture of the proposed export. That it is eminently and entirely suitable for that manufacture can be no objection. Indeed, the Court does not stop at (though it notices) the degree of preparation; but states, in this paragraph (3) that *any* preparation of material is, necessarily, "a part of the manufacture" of the article into which it is made. It confounds 'material' and article, as these words are antithetically used in Sec. 3019; and requires the manufacture here of the *materials* of the article exported (if such materials are of a character requiring any manipulation). That this a just criticism is seen by the statement of the opinion (Rec. 19 bottom, 20 top) that only "*unmanufactured* materials" were intended, or at least

only those requiring " a material amount of labor " in this country;—an impracticable construction, the adoption of which would make hopeless uncertainty and confusion. How far it is from the practical construction given the law ever since its enactment (Aug. 5, 1861) the items to which we have referred, as enjoying drawback privileges, show.

This restriction of the character of the materials to be admitted under sec. 3019 for manufacture here is the necessary corollary of the line of reasoning adopted by the court. If that limited construction of the word materials be (as we think it) the *reductio ad absurdum*, the argument which inevitably leads to it must be fallacious, and the judgment based upon it erroneous.

Lump glue certainly is the prepared material of ground glue; the old bags, of resewn bags; paddy is the toilsome result of foreign labor tending toward the production of cleaned rice; etc., etc.

(4) The utility of the material was thereby limited to the purpose for which it was prepared". (See *supra* (4) and Rec. 22, fol. 30.)

This is equally true of the drawback items above mentioned; and of multitudinous others. But what of it? This really means no more than that we bought here the material most useful for the proposed manufacture, whereby the exportation *the statute was intended to promote* was facilitated, and that commerce enlarged. The Court's objection is in line with its requirement of " a material amount of labor ", (Rec. 20 top), to be expended upon materials the like of which this country does not produce (*Ib.* 21 middle) that the manufacture or preparation of an article which is itself the material of another article is the commencement of the manufacture of such second article. (Rec. 22 fol. 30 and quotation, *supra.*) This last proposition is reiterated at the middle of record, page 23 (fol. 31) and is fundamental to the support of the judgment rendered.

It must be noticed that this theory applies to all shooks so cut as to be fit for box-making; all staves fit to be made into barrels; all nails, etc.; in short, to all completed articles, having a distinctive trade name and recognition, so prepared as to adapt them for use in making a different article, commercially and ordinarily recognized as distinct.

According to this theory, rubber so mixed with other ingredients as to make 'dental rubber' is a partially-manufactured set of teeth, since its use is confined to dentistry; goods solely designed for, and known commercially as, 'coatings' is a partially-made coat; those designed for hat-trimmings are "part of the manufacture" of hats made here just so soon as those trimmings are *in esse* in Europe, etc., etc.

The Court of Claims declines to adopt the common-sense views of Mr. Henry Baldwin and others, hereinbefore mentioned, which form the basis of the cited cases, to wit; that the finished product of one manufacture is the material of another.

All the labor the statute requires is just so much as suffices to manufacture the exported article from the imported materials.

"A trifling amount of labor is often sufficient *to change the nature of the article*, and determine its classification."

Saltonstall v. Wiebusch, 156 U. S. 604.

In this case, the labor was *not* 'trifling.' It entirely changed the nature of the rods and shooks to which it was applied, and that suffices.

XIV.

Public policy.

"'Reason of state,'" said my Lord COKE—advocating in law permitting exportation—"is often used as a trick to put us out of the right way; for when a man can give no reason for a thing then he flyeth to a higher strain and saith, 'It is a reason of state.'"

1 Campb. Ch. Justs. 322.

It is a practice more common with the administrative than with the judicial officers of the government, to start with a theoretical assumption of a 'policy,' not expressly declared by the legislature, and then to distort the plain language of a statute accordingly, to accomplish this supposititious purpose. If facts stand in the way of the theory, so much the worse for the facts. This assumption of a policy, as controlling language of clear import, has found little favor in this Court. (1 Pet. 64; 113 *Id.* 710; 14 Wall. 68, top; 2 Pet. 662; 9 Wh. 188; 11 Pet. 544; 3 How. 24; 109 U. S. 145; 113 *Id.* 710; and many others.)

"No such public policy is avowed" (1 Pet. 64); and its assumption is "a ground much too unstable upon which to rest the judgment of the Court."

Hadden v. Collector, 5 Wall. 111-2.
Munic v. Kent, 9 Ap. Cas. 273.
Alexr. v. Worthington, 5 Md. 472.
U. S. 4 Goldenberg, 168 U. S. 95.

Oberteuffer v. Robertson, 116 U. S. 499, is a signal instance of a futile attempt to argue away the most explicit provisions of a customs law.

COCKBURN, C. J.—"We must consider what the acts of Parliament *actually say*, and not enter upon some remote speculation as to what the legislature *intended*."

Palmer v. Thatcher, 3 Q. B. D. 353.

Apply the test of this canon of construction to the entire opinion of the Court of Claims. (Rec. 19, *fol. 28; 20 top*, and near bottom; *21 middle; 22 top;* 23, fol. 31, *top and middle*, and the 'application'.)

XV.

Conclusion.

If the statute were open to construction, it should be read most beneficially for the subject.

Girr v. Scudds, 11 Exch. 191.
Adams v. Bancroft, 3 Sumn. 387.
Hartranft v. Weigmann, 121 U. S. 616.
U. S. v. Isham, 17 Wall. 504.

But there is nothing doubtful about it. It explicitly directs the refund of duties paid upon imported materials that have been manufactured and then exported; and we have done just the thing prescribed.

Having sought the benefit of this Statute, and complied with every of its requirements and with those of the Treasury Regulations made under it, we should have judgment for the full amount of our claim.

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Points.

No. 149.

Brf. of Atty. Gen.l (Richards) for Appellee (on mo

Filed Dec. 10, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE TIDE-WATER OIL COMPANY, appellant,
v.
THE UNITED STATES. } No. 149.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF IN OPPOSITION TO APPELLANT'S MOTION FOR AN ADDITIONAL FINDING.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE TIDE-WATER OIL COMPANY, appellant, v. THE UNITED STATES. } No. 149.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF IN OPPOSITION TO APPELLANT'S MOTION FOR AN ADDITIONAL FINDING.

I.

It is too late for the appellant to shift its ground in this case. The claim filed by the appellant in the Court of Claims was based upon section 3019 of the Revised Statutes of the United States, which reads as follows:

> There shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury. Ten per centum on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks, respectively.

A reference to the petition filed in the Court of Claims (Rec., p. 2, pars. 10, 11, 12, 13, and 14), and to the findings of fact made by the Court of Claims (Findings Nos. 5, 6, and 7, Rec., pp. 14, 15, 16, 17, and 18), and to the opinion of the Court of Claims (Rec., p. 18) makes it clear that, from the inception of the claim up to the present time, it was presented, prosecuted, discussed, considered, and rejected, under section 3019 of the Revised Statutes alone.

Now, the appellant desires to shift ground and put part of this claim under section 25 of the act of October 1, 1890 (26 Stat., 617), which reads as follows:

> That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation

therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either, or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

The court will observe that the provisions of this section with respect to drawback differ from those of section 3019, Revised Statutes. The precise differences, and their effect, with reference to the facts in this case, it is unnecessary to discuss. What the Court of Claims would have done if this claim, or part of it, had been presented under section 25 of the act of October 1, 1890, it is impossible to determine. The claim was presented and decided in view of the wording of section 3019, and this is the claim, a claim based on section 3019, which is before this court.

II.

If the Court of Claims did not consider and make a finding in the light of the provisions of section 25 of the act of October 1, 1890, it was the fault of the appellant. The appellant chose its position, and planted itself upon section 3019. It is difficult to understand how counsel for appellant can say, "The need of this finding was only recently discovered, when, upon reading the court's opinion, it was found to be based wholly upon Revised Statutes section 3019," when the appellant based its claim wholly upon section 3019, and the finding of the court was accordingly and necessarily restricted to the claim presented.

III.

By reading the findings of the Court of Claims (Rec., pp. 13 to 18) this court will note there is no finding of the precise amount due the appellant in the event the Court of Claims was wrong in its conclusion of law. This is because the ultimate and controlling fact found by the Court of Claims was " that the boxes or cases so exported *were not manufactured* in the United States." (Rec., top p. 18.) In the opinion of the court the conclusion is put in another form, the court stating that the shooks out of which the boxes or cases exported by the appellant were manufactured, *were not materials* that were in reality manufactured in the United States.

It was this finding of the court that disposed of the claim of the appellant, and in view of this finding it was unnecessary for the court to enter into any computation of the amount of drawback to which the appellant would have been entitled if its decision had been otherwise. Hence the court made no such computation. The proposed additional finding asked for by the appellant would be simply a partial computation of this character.

It is submitted that the motion should be denied.

JOHN K. RICHARDS,
Solicitor-General.

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The Tide Water Oil Company, Appellant, v. The United States.	No. 149.

APPEAL FROM THE SOUTH DAKOTA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE TIDE WATER OIL COMPANY, Appellant, v. THE UNITED STATES. } No. 149.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

Concerning the statement of facts in the appellant's brief, it must be noted that section 25 of the act of October 1, 1890 (26 Stat., 567, appellant's brief, p. 9), does not help his contention. That section, like section 3019 of the Revised Statutes, refers to imported *materials*, and only enlarges the claimant's rights by allowing him to claim on articles partly manufactured of domestic materials, and not, as was required before, wholly of imported materials; and makes some further provisions in such case for the identification of the imported materials used, emphasizing the necessity of showing the fact of the manufacture or production of the completed articles in the United States.

The appellant can not properly base an argument on any inference from section 25 of the act of 1890, for the denial by this court of his motion for an additional finding of fact precludes him from showing exportation after October 1, 1890.

ARGUMENT.

THE QUESTION PRACTICALLY CONSIDERED.

The question presented in this case might well be regarded as one of fact, to wit: Where were the boxes or cases manufactured?

The finding of the Court of Claims is that they "were not manufactured in the United States." The qualifying words in the finding, "so far as it is a question of fact," are mere surplusage, if the place of manufacture is the material fact, and in our view it most assuredly is. But we are not inclined to insist upon this view of the case if the court can regard the findings as in the nature of a special verdict, presenting a question of mixed law and fact (*Barney* v. *Schmeider*, 9 Wall., 248), namely: Were the boxes or cases, which were manufactured in the manner set forth in Findings III and IV, "articles wholly manufactured of materials imported" within the meaning of said section 3019 of the Revised Statutes? Our brief shall therefore be mainly confined to this question.

Obviously this section of the statute means that the article exported must be manufactured wholly of imported materials, and that it must be manufactured in the United States.

THE CONTENTIONS.

1. The contention of appellant is that the nailing together of six shooks into the form of a box, and trimming the shooks when their dimensions exceed the proper lengths or widths in its factory at Bayonne, in New Jersey, constitute the manufacture of a box, and that until the shooks are so trimmed and nailed together they are merely "materials" within the meaning of the section.

2. Our contention is that the nailing together in the United States of six shooks which were manufactured in Canada, for the express purpose of being made into a box, does not constitute the manufacture of a box in the United States, even though some trimming of the shooks is done in the United States, when their dimensions exceed the proper lengths or widths.

Here we may call attention to the labor expended in trimming the shooks, although we do not regard this feature of the case as material. We merely desire to show that trimming was only occasionally required.

Finding IV says:

> The shooks so manufactured in Canada, and imported into the United States, were, at the claimants' factory in Bayonne ,N. J., constructed into boxes or cases * * * by nailing the same together * * * and by trimming when defective in length or width to make the boxes or cases without projecting parts. * * * The principal part of the labor performed in trimming the boxes was occasioned by the Canadian manufacturer not cutting the shooks into the required lengths and widths for

use in making the boxes, and for which the claimants sometimes charged the cost of such trimming to the Canadian manufacturer.

It is a fair inference from this finding that as the Canadian manufacturer was chargeable with the expense of trimming the shooks into proper lengths and widths; as such defects could only be the result of carelessness on the part of his workmen; and as he would naturally desire to satisfy his customers, therefore, as the charge was only "sometimes" made, trimming was only sometimes necessary, and hence the words "when" and "sometimes" indicate an exception and not the rule.

In the light of these facts it does not seem possible, we think, to escape the conclusion of the court below in its ultimate finding that "*the boxes or cases so exported were not manufactured in the United States,*" even though trimming was generally or always necessary.

Take for illustration a common chair, which is a more complex article of manufacture than an ordinary packing box. Its different parts must be manufactured before they are put together. Would any chair maker say that the nailing or fastening together of these parts constituted the manufacture of a chair? Would he not insist that his wages must not be limited to the work of nailing the parts together, and that the hand work he has expended in making the different parts must also be paid for as proper items in his wages for making a *chair?* Is it not clear that hand work or machine work and manufacture are equivalent terms, and that when the parts of a chair are made by hand or machinery those parts are manu-

factured articles as much as the chair itself is a manufactured article? Similarly, when the different parts of a common packing box have been manufactured out of boards by hand labor, and those parts are ready for nailing together in the shape of a box, the article is so nearly a finished manufacture that it becomes easy to draw a distinction between the boards purchased in their rough state by the mechanic and the article which he has made out of them. If in such case we ask the mechanic to distinguish between the materials he has used and the article he has manufactured, he will point to the pile of boards in his shop and some nails and say: "There are the materials and this box is the result of my hand work." Or, if the box is not nailed together: "The boards are the materials out of which I have manufactured the parts of the box. I consider that when I have sawed the boards into proper lengths, planed and trimmed them, I have almost finished the manufacture of a packing box."

We do not undertake to follow the learned counsel for appellant into the superfine distinctions which he attempts to draw between the word "materials" and the word "articles" in section 3019; nor to determine the physical or metaphysical question as to the exact moment when the morphological development of the six shooks into a box takes place. So far as we are able to comprehend his argument, it seems to lead to the conclusion that a box can be made without its parts, and that when the last nail is driven into it, the shooks of which it is composed perish, and a box comes into being.

If we may be permitted to draw an analogy from the "doctrine of dissolution" of a modern philosopher, who

says that there is a fundamental antagonism between dissolution and evolution in that "one is an integration of motion and a disintegration of matter" and "the other an integration of matter and a disintegration of motion," we shall proceed to disintegrate a packing box composed of six shooks and the proper complement of nails by drawing out the latter in order to determine whether the shooks or the box or both are manufactured articles or whether the former are merely materials. The nails are drawn and the dissolution of the box is accomplished. The mechanical "motion" which made it has unmade it. Have we by this process manufactured six shooks? If not, and if shooks are manufactured articles quite as much as the box into which they are formed, how can we regard the manufacture of a box as something entirely distinct from the manufacture of the shooks and nails of which it was composed?

The statutes make no such fine distinction. They classify "casks and barrels, empty, sugar-box shooks, and packing boxes and packing-box shooks of wood" as manufactured articles (22 Stat., 502; 26 Stat., 583), which obviously they are without such classification. When such shooks are exported in the form of packing boxes, they remain shooks in our customs laws; hence if duty has been paid on them and no drawback has been allowed, they may be reimported under the free list as boxes; otherwise they are dutiable as shooks to the same extent as and to no greater extent than if the boxes of which they are composed are reimported.

The boxes, of course, are "articles." That is a comprehensive term (*Junge* v. *Hedden*, 146 U. S., 233), but it is here restricted to articles "wholly manufactured of imported materials," and the inquiry is, are such articles wholly manufactured in the United States? There can be no valid contention that the words "in the United States" are not necessarily understood in the statute after the words "wholly manufactured," for the claimant argues that the articles were manufactured in the sense of the statute, that is, were wholly manufactured of imported materials, which must be in the United States or there is no force in the word "imported." And there is a distinction between the proper view of the word "articles" in *Junge* v. *Hedden* and here, which still further clears and limits the question. That case held that the word "articles," as used in tariff acts, could not be restricted to articles put in condition for final use, but embraced as well things manufactured only in part, or not at all. It suggests the distinction that while "articles" in tariff provisions (22 Stat., 491, 514, 517, "articles the growth, produce, and manufacture of the United States") necessarily includes raw materials—"materials," in short (for this is the force of the words "growth" and "produce")—as well as manufactures, in the special provisions for drawback under section 3019 "articles" is contrasted with "materials" (particularly because of the use of the words "wholly manufactured"), so that "materials" points out "articles" which are "growth or produce" rather than manufacture. These

words include raw materials like grain, wool, ore, and such further crude forms as pig metal, and lumber in the rough or dressed.

The point where such materials cease to be produce or productions and become manufactures is hard to define in a speculative way, but should not be so practically. This leads us back to the real question in the case, namely, whether imported shooks are materials as that word is used in the statute, and whether boxes made of imported shooks are wholly manufactured in the United States. The box is a manufactured article, and the manufacture was completed when the parts were finally nailed together. Did its manufacture begin with the process of separating the bundles of ends, bottoms, sides, and tops of shooks and nailing them together, or did it begin when the shooks were made in Canada out of lumber sawn into boards and planed, and was the making of the shooks consequently part of the manufacture of the box? Strictly, the manufacture of the box began when the tree was cut, and continued through all the processes up to completion. But, while we may consider that dressed lumber has not been worked up to such a stage of manufacture as to cease to be a material, how can the importer fairly contend that an essential part of the process beyond that stage, such as the fabrication of the shooks, did not advance the resulting articles beyond the stage of materials in the same sense? If so, why stop there? Shooks (the parts rather than the materials out of which a box is made) and boxes are associated in tariff provisions in a closely related way as manufactures. If it were for any reason advantageous to import boxes, com-

pleted except for fastening the tops, as materials for some further stage of evolution or metamorphosis, could they be brought in as materials, and if they could not, why may shooks?

The stage at which growth and produce does not fairly embrace manufactured or partially manufactured articles as material, properly stops short of such a point in transformation as a shook. It may be difficult to define the limit, but a line must be drawn, and to draw it at the last stage of well recognized practical inclusion in "materials," such as dressed lumber, is sound. Suppose it were more advantageous to import lumber in the rough as logs, or as lumber merely hewn and sawn, and make shooks here and export in that form for completion abroad, such shooks would undoubtedly be articles on which drawback could be claimed. They would not be materials. Because the fact is otherwise, that is, because it is advantageous to import shooks and export boxes, can it fairly be claimed that shooks are materials? They are clearly manufactured. Are they also materials of manufacture, or of some further stage in the line of evolutionary manufacture? Does *this* law, in other words, recognize "manufactured materials?" Lumber, it is true, in a general sense, is manufactured, but in the practical distinctions observed it is *produced* rather than *manufactured*.

While it may be admitted that tariff laws have not uniformly preserved the distinction between materials and manufacture, so that it sometimes appears as if manufactures were the materials of a further stage of development, such confusion, so far as it exists, appears in acts which impose duties (e. g., tariff act of 1883, Revised

Statutes, section 2504, page 463, "burlaps and like *manufactures;*" *ibid.*, "gunny cloth, * * * or other *materials;*" but, again, the same rate of duty is applicable to *manufactured* steel and articles of steel *partly manufactured*, page 465; also as to "*anchors* or *parts* thereof," page 466). And we may admit that "ready-made clothing of whatever *material* composed" refers to silk, wool, and linen *cloths* or *fabrics*, though such cloths and fabrics are also classed as manufactures. (Revised Statutes, section 2504, "brown and bleached linens or other manufactures," page 462; "dress and piece silks," page 469; "woolen cloths," page 471.) But it may be pointed out that when a product used in further manufacture is called a material the term is often equivalent to "substance," which is not strictly the same as materials. "Card cases of whatever material composed" (22 Stats., 511) would point out leather, *inter alia*, as a generic *substance*. In this case "wood" or "lumber" would be a parallel, but not "shooks." So in the same act, page 498, articles "wholly or partly manufactured from sheet iron, or of which sheet iron shall be the material of chief value," indicates the generic substance, sheet iron—sheet iron in the mass, out of which the articles are fabricated. So wood or lumber are materials, the *substance* out of which articles are made. "Shooks" are not "material" or "materials" in that sense. They are separate and individuated things. We speak of "lumber" broadly, generically; "a pile of lumber." We speak of a "set of shooks."

Granting, however, for the sake of argument, that tariff provisions as to materials and manufactures can

properly throw light upon the meaning of the language of section 3019, it immediately appears, on the other hand, that Congress has always looked upon shooks and boxes as substantially the same thing by their familiar association for dutiable purposes and in free-entry provisions; when they are imported they are subject to the same rate of duty in the same paragraphs, and when manufactured in the United States and exported they are entitled upon reimportation to free entry in their final form as boxes. (22 Stat., sec. 2502, pp. 502, 517, 518; 26 Stat., par. 228, p. 583, par. 493, p. 603.) The language of the provisions relating to free entry is "casks, barrels * * * and other vessels of American manufacture, * * * including shooks when returned as barrels or boxes." Congress has, therefore, regarded the step from a "set of shooks" to a box as a slight one, and has clearly indicated that "shooks" are not to be regarded as materials out of which articles are to be manufactured to encourage domestic manufactures and upon export to be entitled to drawback, but as manufactured articles themselves, coming into competition with domestic products, upon which, therefore, a correspondingly high rate of duty is laid.

We may well rest the question as to the purpose and policy of the law under section 3019 upon the reasoning of the learned court below, and without investigating at length the science of political economy, tariff history, and legislation, and the distinction between "bounties" and "drawbacks," we may be satisfied that while one object

of the statute was to promote our export trade, that object was certainly not to be secured at the expense and sacrifice of domestic manufactures. The main scheme and policy of our tariff laws would be ignored if we held that the only or chief purpose was to encourage export trade, and the court therefore rightly concludes that the controlling purpose of the statute was to foster domestic manufactures, at the same time permitting those engaged in domestic manufacturing to obtain a drawback on such imported materials subject to duty as they could advantageously use.

Considering now some of the cases in which this court has passed upon questions as to "materials" and "manufactures," the Case of *Worthington* v. *Robbins* (139 U. S., 337) held that white enamel used for various purposes, and requiring new processes of manufacture before it could be adapted to any particular practical use, was subject to duty as an "article manufactured in whole or in part" and not to a higher rate as "watch materials," although it was imported for use in making watch dials; and that in order to be dutiable under the latter term the article as imported must be in such form as to show adaptation to making watches. This case illustrates the shifting use of the terms "materials" and "manufactures" or "articles manufactured." Inasmuch as the materials in the case now before the court did not require new processes of manufacture in any real sense, and were in a form showing their adaptation to the making of boxes, and their utility was strictly limited to that purpose (for which they were prepared), any argument drawn from

that case fails of effect. The distinction indicated by the case helps us.

In *Hartranft* v. *Wiegmann* (121 U. S., 609), shells, cleaned, ground, and etched, were held not to be manufactures of shells, but the court said that they were still shells and had not been manufactured into a new and different article having a distinctive name, character, or use from that of a shell.

Here, in order to constitute that case an authority, it would have to appear that the original boards, although having labor applied, had been merely treated in some similar or equivalent way as the shells in the former case; but as a matter of fact they were manufactured into a new and different article, having a distinctive name, character, and use. In *Saltonstall* v. *Wiebusch* (156 U. S., 601) the court held that certain articles made of forged steel were to be classified as "manufactures of metals" rather than as "forgings of iron or steel," for the reason that the articles in question received further treatment before they were complete, and therefore did not properly belong in a separate enumeration of the tariff act of 1883 for forgings of iron or steel. The provisions as to forgings recognized a stage of manufacture, and the court by its language, page 603, indicated as to "forgings" a division into those incomplete, in process of manufacture, and those finished and ready for use, from which the inference is plainly to be drawn that either at the complete or final stage they are manufactured articles. And the court, while stating that a small amount of labor is not decisive of a question of classification so as to stop

"forgings" short of "manufactures," gave as the reason the possible object of Congress to protect the additional labor. This argument can not be advanced here, for the very reverse is the case. Congress doubtless did intend to protect the additional labor involved in making shooks as well as boxes in this country, which was defeated by making the shooks in Canada and merely nailing them together into boxes in this country.

But it may be asked with reference to the claim that the last stage of the *materials* is "lumber" or "dressed lumber"—why should we hold that materials in the sense of the statute stop short at dressed lumber and do not include shooks? Why should shooks be manufactures of lumber or manufactured lumber rather than materials? And the answer is that this is the obvious distinction and the natural place to draw the line. In the development of tariff provisions there is a recognition of successive distinctions between lumber in the rough, dressed lumber, and manufactures of wood—(to indicate merely the outline of the classification). The wood schedule of the act of 1883 (22 Stat., 501, 502) provides for timber in two paragraphs; for sawed boards and planed lumber in another; and for lumber planed, tongued, and grooved in the following paragraph; then for still more reduced forms, as laths, shingles, etc., imposes higher rates, as well as for manufactures of wood not specially provided for. The act of 1890 (26 Stat., 582) preserves substantially this classification, and in enlarging the free list on wood provides for certain woods not further manufactured than "cut into blocks

suitable for articles into which they are to be converted," and than "cut into suitable lengths for manufactures into which they are intended to be converted" (p. 611).

The act of 1894 further extended the free list in respect to wood and manufactures of wood, but similarly recognized dressed lumber, manufactures of wood, and various successive changes in its manufacture. (28 Stat., 521, 545, 546.) The provisions of the latter act were reviewed in the case of the *United States* v. *Dudley*, in which the Government sought to tax certain boards or planks of specified length, breadth, and thickness, and notched, tongued, or grooved, under paragraph 181 of the act of 1894 (28 Stat., 509) as "manufactures of wood not specially provided for," or under section 3 of said act as "articles manufactured in whole or in part not specially provided for in this act." The circuit court (74 Federal Reporter, 548) held that the duty should be assessed under paragraph 676 of said act as "lumber dressed," for which the importers contended, and this decision was affirmed in the circuit court of appeals. (45 U. S. Appeals, 654.) The case was affirmed without opinion by a divided court, and is confessedly a very close one; but is in our favor as authority on the proposition that while planks or boards, planed, grooved, and tongued, had not advanced beyond the condition of dressed lumber, manufactures of wood are articles of wood and completed into things different from the wood of which they were made. Certainly shooks fall under this definition as much as or more than laths or shingles.

In that case the Government argument was that the phrase "rough or dressed" does not include articles which after being dressed have undergone a further process of manufacture sufficient to endow them with a specific use and a separate designation, and shooks were mentioned as in substantially the same stage as the dressed lumber in that case (the inference from which is that there can be no doubt as to the case of shooks).

The decision in *United States* v. *Quimby*, 4 Wall., 408, is applicable to the present case. There the following article was held to be within the general provision of the Morrill tariff of March 2, 1861, concerning all articles manufactured wholly or in part, not otherwise provided for:

"616 cords of split white-ash timber, chiefly designed to be used in the manufacture of long shovel handles."

The decision was based upon that rendered at the same time in *United States* v. *Hathaway*, 4 Wall., 404, which related to "a quantity of white-ash timber split in the form of pipe and hogshead staves at the place of importation." Mr. Justice Nelson said (p. 408):

"If it has undergone the process of manufacture, even in part, it is taken out of the free list.

"In the present case the article is prepared by splitting for the hand of the cooper, in the manufacture of the pipe or hogshead, a process which has the effect to relieve him from much of the labor that would otherwise be required in adapting it to the use intended. It has already been reduced to the proper form and size—a work which in the first stages of the manufacture of the hogs-

head must be done, and by which a considerable advance is made in fitting and finishing it for the market."

So in the present case, the articles in question have been reduced to the proper form and size, so that they may be used by the carpenter without further labor in fitting or finishing.

The principle of this case is applied to other schedules also of the tariff act. The definition given in *Erhardt* v. *Hahn* (14 U. S. App., 117, 120) is:

"Where an article has been advanced through one or more processes into a completed commercial article known and recognized in trade by a specific and distinctive name other than the name of the material, and is put into a completed shape designed and adapted for a particular use, it is deemed to be a manufacture."

While these cases arose under tariff provisions, they are strongly persuasive here, because shooks are obviously further advanced as manufactures than "split ash timber for shovel handles," "hogshead staves," and "planed, tongued and grooved timber."

Our contention from the cases above cited is, that "box shooks" are not "materials" within the meaning of section 3019 of the Revised Statutes, but on the contrary that they are "articles wholly manufactured" within the meaning of that section.

It has been repeatedly decided under the tariff acts that where an article has been advanced through one or more processes into a completed commercial article, known and recognized in trade by a specific and distinctive name other than the name of the material, and is

put into a completed shape designed and adapted for a particular use, it is deemed to be a manufacture. It is sufficient to refer to *Hartranft* v. *Wiegmann*, 121 U. S., 609; *Schriefer* v. *Wood*, 5 Blatchf., 215, and *Stockwell* v. *United States*, 3 Cliff., 284. (*Erhardt* v. *Hahn*, 14 U. S. App., 117, 120.)

APPELLANT'S BRIEF.

It is not necessary to consume the time of the court in reviewing at length the brief of the learned and industrious counsel for the appellant; nor to pursue the subject back through legislation and debates to the beginning of the science of political economy. The distinctions drawn are many and refined. It will be sufficient merely to indicate answers to some of the positions taken by the learned counsel.

He contends that drawbacks are not meant to protect domestic manufactures, but to promote foreign commerce. Let one of his own authorities (appellant's brief, p. 18), quoting Dr. Smith, answer him: "Drawbacks do not occasion the exportation of a greater quantity of goods than would have been exported had no duty been enforced * * * but [they] hinder the duty from driving away any part of * * * [the capital of the country] to other employments. They tend not to overturn that balance which naturally establishes itself * * *." In other words, the great economist thinks an equilibrium is preserved. He does not think the chief purpose is to promote foreign commerce.

The learned counsel urges drawback provisions as a contract. If the refund had not been promised, the goods

would not have come in at all, he says. But the promise was on conditions and terms, and the claimant must read and construe the contract correctly. Its terms are before him, and he can not claim to have been deceived or misled.

Again turning his own guns upon him, in attempting to show that the raw material of one manufacture is the finished product of another, he quotes remarks of Mr. Justice Baldwin, at the time a member of the House of Representatives, in reporting a tariff bill (p. 39, appellant's brief). But the quotation concludes: "I believe the safer rule is to consider that which is taken from the earth as the raw material, and every change in its form or value by labor as a manufacture." That is substantially the ground upon which we stand, except that we are willing to admit that the conditions of trade and manufacture developed since 1820 require that the primary stages by which raw and crude pass into manufactured should still remain in the class "materials." He argues that transformation from shooks to box is manufacture. It is part of manufacture—the last step. But grant it broadly, for argument's sake, the transformation from boards to shook, is also manufacture, and this practically takes shooks out of the class of materials and defeats the claim.

He substantially admits (p. 46 of his brief) that the manufacture contemplated by the statute must be in the United States, but contends that the word "wholly" qualifies "materials" rather than "manufactured"—that it refers to the things imported rather than the process

of manufacture. The juxtaposition of terms in the sentence forbids this, and we have answered it in other portions of this brief by the argument at large. He thinks that the Government seeks to draw a distinction between making and manufacturing. The Government is quite willing to agree that substantially and plainly they mean the same thing, but the boxes were not made here; they were not manufactured here. The imports—already manufactured articles—could not be exported without real labor and process of fashioning (not mere arrangement and connection of parts) being expended upon them, since the requisites were that they were to be manufactured of imported materials and were to be wholly manufactured into the ultimately desired articles in the United States.

As to the criticism upon the use of the phrase "not within the meaning of the act," as an official qualification evasive of plain right and duty—this is not a screen behind which the Government officers hide. It suggests the careful scrutiny into the meaning of language used so as to reach the legislative intent, and is to be regarded in construction by all whose duty it is to administer as well as to interpret the law. It is only necessary to add that decisions are very numerous in in which this qualification has been addressed and applied to many laws. Further, it is a well-known principle that departmental rulings must be uniform and long continued to constitute a rule of law of sufficient weight to be set against judicial interpretation of the meaning of a statute, and then only when the statute is doubtful. Such is not the case here. It is to be noted that the presumption as

to rates of duty is no longer in favor of the importer (*Hartranft* v. *Wiegmann*, 121 U. S., 609), but in favor of the collector, (*Arthur* v. *Unkart*, 96 U. S., 118; *Erhardt* v. *Schroeder*, 155 U. S., 124), and this change should weigh in favor of official construction and action in provisions, like this, related to the tariff.

Again, as to the cases of *United States* v. *Schoverling* (146 U. S., 76) and *Hedden* v. *Richard* (149 U. S., 346), and similar cases cited (p. 45, brief of appellant), they arose under and were controlled by the very different provisions of laws providing for duty, and in the last-mentioned case the court's opinion substantially was that a certain question of fact affecting commercial designation should have been submitted to the jury.

Finally, the learned counsel suggests that the Constitution forbids the laying of a tax upon exports, and charges that to refuse this claim would amount to a breach of that rule of the Constitution. To refuse a drawback is not to lay a tax upon exports. All that the customs officials and the court below have done is to refuse to allow refund of duty upon exportation of imported articles, upon the well-taken ground that under the law drawback was not allowable and the claimant not entitled. The case has nothing to do with a tax upon exports. Besides, according to his own contention, the only article exported was a box, and the taxed materials were consumed in its manufacture in the United States and not exported.

AN ANALOGY DRAWN FROM AN ABSTRACT VIEW.

Materials are always things, whether crude or advanced. Manufactures are always things, whether at a lower or higher stage. But the word "manufacture" also means a process; it is a verbal noun, so to speak, and suggests action and not result. So, when the act says "wholly manufactured of imported materials," we must especially keep in view the process of the production and not the product. The process is a continuing one, and (recognizing the practical necessity of not placing the true limits of "materials" back of "dressed lumber") began with the making of the shooks out of lumber. The product, the box, is a manufacture, but it was not manufactured in the United States.

Inasmuch as the distinctions affecting the term "materials" here are somewhat elusive and difficult to define, it may assist to express them if we refer again to and pursue the scientific analogy suggested in the first portion of this brief.

The process of manufacture may correctly be likened to the action of force in organic nature. Force, effecting its results through some form of motion, applies to the lower and lowest forms of inert matter, structural and functional development, until in the evolution the single cell is so multiplied and differentiated as to become a shell containing a living organism, whose function has been transformed from passivity, real or apparent, to activity. So manufacture seizes materials and transforms them into a product, a box, differing vastly from the mere aggre-

gate of woody cells in a tree, and having a distinct differentiated use. At what stage in the many stages of the evolution of nature does the growing structure cease to be mere matter and become an organism with defined uses? Surely very early in the history of the transformation. So, in our case, in what stage in the less numerous series of steps from tree to box did the growing result cease to be material and become for our purposes an article—a manufacture? Surely before the shook was completed and packed with others conveniently for shipping and passing over by the slight completing exertion of force into a box. Break down and disintegrate the shell and its tenant, you destroy its life. It is no longer useful as a trilobite. But we essentially carry its atoms no further back than the last stage which nature perfected and to which she brought it. We have not made or created that particular cell structure which had been reached before the living force was finally correlated and then destroyed; much less have we by such dissolution taken it down the series of changes to the ultimate matter, or taken it to any intermediate stage of matter or material. So, here venturing perhaps a strange but not untrue analogy, if we withdraw the nails have we made shooks? Have we reversed the process and so shown that shooks were, after all, materials? By strict consequence, if we merely nail the shooks together and occasionally trim them, where in infrequent cases the related Canadian enterprise did not do that work properly, we have not made a box.

To vary the language of an illustration of the court below, it is not sufficient to stitch the parts of a garment together in the United States, but, although perhaps the cloth need not be made here, it must be measured, cut to the fitting dimensions, pressed and sponged here, to entitle the exporter to the benefit of drawback on the completed coat. If manufacture is the transforming and fashioning of raw materials into a change of form for use (*Kidd* v. *Pearson*, 128 U. S., 1, 20), such construction of boxes in this country out of imported shooks, as is shown in this case, is not transformation of the materials, but only the completion of a transformation which began with the preparation of the materials.

As to the nails with which the boxes were made: The imported rods from which the nails were wholly manufactured in this country well illustrate the difference between raw materials or materials not yet advanced beyond such condition, and manufactures which have passed further on the way. The rods were clearly materials; the shooks were not. But the court below indicates the reasoning on which the nails are not fairly entitle to drawback. They were not the articles exported; they merely formed part of the boxes, and as such drawback upon them is not due. If the shooks had been exported in the original import packages and the nails as nails, both would have been entitled to drawback (the former under sections 3015, 3016, the latter under section 3019, Revised Statutes), but not when they constitute boxes by their final assemblage. It may be that if the exportation had occurred after October 1, 1890, the nails

would have been entitled to refund of the rod duties under section 25 of the act of that date, because the nails would "so appear" and could be so identified as to meet the requirements of that section. But this court, by their denial of the claimant's motion for an additional finding of fact in the case, have forbidden him to set up any claim under the act of 1890. The United States confidently submits that question to the court.

It is respectfully submitted that the judgment of the Court of Claims should be affirmed.

HENRY M. HOYT,
Assistant Attorney-General.
FELIX BRANNIGAN,
Assistant Attorney.

TIDE WATER OIL COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 149. Argued April 29, 1898. — Decided May 31, 1898.

The court of claims made the following findings of fact in this case. I. During the years 1889, 1890 and 1891 the claimant was a corporation existing under the laws of New Jersey, organized in 1888, and having a factory for carrying on its business at Bayonne, in that State. II. In 1889 and 1890 the claimant imported from Canada box shooks, and from Europe steel rods, upon which importation duties amounting in the aggregate to $39,636.20 were paid to the United States, of which sum $837.68 was paid on the importation of the steel rods. III. The box shooks imported as set forth in finding II were manufactured in Canada from boards, first being planed and then cut into required lengths and widths, intended to be substantially correct for making into boxes without further labor than nailing the shooks together. They were then tied up in bundles of sides, of ends, of bottoms, and of tops of from fifteen to twenty-five in a bundle for convenience in handling and shipping. IV. The shooks so manufactured in Canada and imported into the United States as aforesaid were, at the claimant's factory in Bayonne, New Jersey, constructed into the boxes or cases set forth in Exhibit E to the

Statement of the Case.

petition herein, by nailing the same together with nails manufactured in the United States out of the steel rods imported as aforesaid, and by trimming when defective in length or width to make the boxes or cases without projecting parts, *i.e.*: the shooks were imported in bundles of ends, of sides, of tops and of bottoms, each part coming in bundles separated from the bundles of other parts. From one of these bundles of ends the ends of a box are selected, to which the sides taken indiscriminately from any bundle of sides are nailed by nailing machines; then the sides are trimmed off even with the ends by saws; then by bottoming machines bottoms taken from any bundle of bottoms are nailed on; then the bottoms are trimmed even with the sides by saws; then, after being filled with cans, the tops are nailed on; and then the boxes or cases are ready for exportation. The cost of the labor expended in the United States in the necessary handling and in the nailing and trimming of the boxes as aforesaid was equal to about one tenth of the value of the boxes. The principal part of the labor performed in trimming the boxes was occasioned by the Canadian manufacturer not cutting the shooks into the required lengths and widths for use in making the boxes, and for which the claimants sometimes charged the cost of such trimming to the Canadian manufacturer. *Held*, that the company, when exporting these manufactured boxes, was not entitled to be allowed a drawback under Rev. Stat. § 3019.

THIS was a petition by a corporation of New Jersey for a drawback of duties paid upon certain shooks imported from Canada, and iron rods imported from Europe, which were manufactured into boxes or cases by the petitioner in its factory at Bayonne, New Jersey, and were subsequently exported to foreign countries.

The Court of Claims made the following findings of fact:

"1. During the years 1889, 1890 and 1891 the claimant was a corporation existing under the laws of New Jersey, organized in 1888, and having a factory for carrying on its business at Bayonne, in that State.

"2. In 1889 and 1890 the claimant imported from Canada box shooks, and from Europe steel rods, upon which importation duties amounting in the aggregate to $39,636.20 were paid to the United States, of which sum $837.68 was paid on the importation of the steel rods.

"3. The box shooks imported as set forth in finding 2 were manufactured in Canada from boards, first being planed and then cut into required lengths and widths, intended to be sub-

stantially correct for making into boxes without further labor than nailing the shooks together. They were then tied up in bundles of sides, of ends, of bottoms and of tops of from fifteen to twenty-five in a bundle for convenience in handling and shipping.

"4. The shooks so manufactured in Canada and imported into the United States as aforesaid were, at the claimant's factory in Bayonne, N. J., constructed into the boxes or cases set forth in Exhibit E to the petition herein, by nailing the same together with nails manufactured in the United States out of the steel rods imported as aforesaid, and by trimming when defective in length or width to make the boxes or cases without projecting parts, *i.e.*: the shooks were imported in bundles of ends, of sides, of tops and of bottoms, each part coming in bundles separated from the bundles of other parts. From one of these bundles of ends the ends of a box are selected, to which the sides taken indiscriminately from any bundle of sides are nailed by nailing machines; then the sides are trimmed off even with the ends by saws; then by bottoming machines bottoms taken from any bundle of bottoms are nailed on; then the bottoms are trimmed even with the sides by saws; then, after being filled with cans, the tops are nailed on; and then the boxes or cases are ready for exportation.

"The cost of the labor expended in the United States in the necessary handling and in the nailing and trimming of the boxes as aforesaid was equal to about one tenth of the value of the boxes.

"The principal part of the labor performed in trimming the boxes was occasioned by the Canadian manufacturer not cutting the shooks into the required lengths and widths for use in making the boxes, and for which the claimants sometimes charged the cost of such trimming to the Canadian manufacturer.

"5. The boxes or cases made as aforesaid were exported from the United States to foreign countries in conformity with the regulations of the Treasury Department then in force, to wit, Treasury regulations of 1884, sections 966, 967 and 968, hereinafter set out, relating to drawbacks upon the exporta-

tion of articles wholly manufactured of imported materials, and cases so manufactured were entered for such drawback upon the exportation thereof.

"6. For about four years prior to July 31, 1889, the Treasury Department had allowed and paid a drawback upon the exportation of boxes made from imported shooks fastened together with nails made from imported steel rods as aforesaid; and the Treasury Department was requested to pay the drawback on the exportation of the boxes or cases set forth in Exhibit E to the petition, but refused for the reasons set forth in the following communication addressed to the collector of customs at New York:

"'TREASURY DEPARTMENT, *July* 31, 1889.

"'SIR: Referring to department letter of March 2, 1885, addressed to the then collector at your port, in which a rate of drawback was established on shooks used in the manufacture of boxes, you are informed that the department has recently given the matter further consideration, and it appears upon investigation that the boxes are made complete in Canada, with the exception of nailing, and that the only manufacture which they receive in this country consists in their thus being nailed together, which part of the labor is omitted to be done in Canada merely for convenience in shipping to the United States.

"'The boxes appear to have been manufactured complete abroad, and in the condition imported resemble the finished furniture imported in pieces which the department has heretofore held to be dutiable at the rate applicable to finished furniture. (See Synopsis, 4272.)

"'The simple act of nailing them together is not, in the opinion of the department, a manufacture within the meaning of section 3019, Revised Statutes, and the authority to allow drawback thereon is hereby revoked.

"'You will accordingly receive no further entries for drawback in such cases.

"'Respectfully yours, GEORGE C. TICHNOR,
"'*Assistant Secretary.*

"'Collector of Customs, New York.'

The Treasury regulations of 1884 referred to in finding 3, articles 966, 967 and 968, are as follows:

"ART. 966. On articles wholly manufactured of imported materials on which duties have been paid, a drawback is to be allowed, on exportation, equal in amount to the duty paid on such imported materials, less 10 per cent thereof, except on exportations of refined sugars, in which case the legal retention is 1 per cent.

"'ART. 967. The entry in such cases will be as follows, and must be filed with the collector at least six hours before putting or lading any of the merchandise on board the vessel or other conveyance for exportation.'"

Here follows a form of entry for exportation with oaths of exporter and of the proprietor and foreman of manufactory.

Article 968 contained a form of bond for exportation.

Upon the foregoing findings the court found the ultimate fact, so far as it was a question of fact, that the boxes or cases so exported were not manufactured in the United States, and, as a conclusion of law, that the claimant was not entitled to recover; and the petition was dismissed. Whereupon petitioner appealed to this court.

Mr. Edwin B. Smith for appellant.

Mr. Assistant Attorney General Hoyt for appellees. *Mr. Felix Brannigan* was on his brief.

MR. JUSTICE BROWN, after stating the case, delivered the opinion of the court.

The single question presented for our consideration in this case is whether the boxes or cases exported by the petitioner were "wholly manufactured" in the United States within the meaning of the section hereinafter cited.

The facts were, in substance, that the claimant imported from Canada in 1889 and 1890 box shooks, and from Europe steel rods, upon which duties were paid to the amount of $39,636.20 under the tariff act of March 3, 1883, 22 Stat. 488, 502, which levied a duty of thirty per cent upon "casks and

barrels, empty sugar-box shooks, and packing boxes, and packing-box shooks, of wood, not specially enumerated or provided for in this act." The box shooks so imported were manufactured in Canada from boards, which were planed and cut into the required lengths and widths for making into boxes without further labor than nailing them together. They were then tied up into bundles of sides, ends, bottoms and tops, of from fifteen to twenty-five in a bundle, for convenience in handling and shipping. After importation, they were made up into boxes or cases, by nailing the proper parts together with nails manufactured in the United States out of the imported steel rods, and by trimming, when defective in length or width, to make the boxes or cases without projecting parts.

The ends and sides of the boxes were nailed together by nailing machines, and the sides trimmed off even with the ends by saws. Then bottoms were nailed on and trimmed in the same manner. After being filled, the tops were nailed on, and the boxes made ready for exportation. The cost of the labor expended in the United States in the nailing, handling and trimming of the boxes was about one tenth of the value of the boxes. The principal part of the labor in trimming the boxes was occasioned by the Canadian manufacturer not cutting the shooks into the required lengths and widths for making the boxes, the cost of which trimming the claimant sometimes charged to the Canadian manufacturer.

Upon this state of facts petitioner made claim for duties paid as above upon the shooks under Rev. Stat. § 3019, which reads as follows:

"There shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury. Ten per centum on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks respectively."

The question arises whether the boxes in question were

"wholly manufactured" within the United States of "materials imported" from abroad. The section above quoted uses the words "wholly manufactured of materials imported," but we understand it to be conceded that the words "in the United States" should be considered as being incorporated into the section after the word "manufactured." The provision would be senseless without this interpolation. The object of the section was evidently not only to build up an export trade, but to encourage manufactures in this country, where such manufactures are intended for exportation, by granting a rebate of duties upon the raw or prepared materials imported, and thus enabling the manufacturer to compete in foreign markets with the same articles manufactured in other countries. In determining whether the articles in question were wholly manufactured in the United States, this object should be borne steadily in mind.

The primary meaning of the word "manufacture" is something made by hand, as distinguished from a natural growth; but as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily, the article so manufactured takes a different form, or at least subserves a different purpose from the original materials; and usually it is given a different name. Raw materials may be and often are subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. Thus, logs are first manufactured into boards, planks, joists, scantlings, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, window sashes, trimmings and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name.

The material of which each manufacture is formed, and to which reference is made in section 3019, is not necessarily the

original raw material — in this case the tree or log — but the product of a prior manufacture; the finished product of one manufacture thus becoming the material of the next in rank. This case, then, resolves itself into the question whether the materials out of which these boxes were constructed were the boards which were manufactured in Canada or the shooks which were imported into the United States.

While the planing and cutting of the boards in Canada into the requisite lengths and shapes for the sides, ends, tops and bottoms of the boxes, was doubtless a partial manufacture, it was not a complete one, since the boards so cut are not adaptable as material for other and different objects of manufacture, but were designed and appropriate only for a particular purpose, *i.e.*, for the manufacture of boxes of a prescribed size, and were useless for any other purpose. It is not always easy to determine the difference between a complete and a partial manufacture, but we may say generally that an article which can only be used for a particular purpose, in which the process of manufacture stops short of the completed article, can only be said to be partially manufactured within the meaning of this section; nor can we regard the mere assembling and nailing together of parts complete in themselves and destined for a particular purpose as a complete and separate manufacture. Thus, chairs are made of bottoms, backs, legs and rounds, each one of these parts being made separately and in large quantities. If imported in this condition from abroad, and the parts were assembled and glued or screwed together here, we think it entirely clear that such chairs would not be wholly manufactured in the United States; and the same may be said of the staves, heads and hoops which constitute a barrel. Upon the theory of the claimant, if all the parts which constitute a wooden house were made separately, as they sometimes are, and imported from abroad and put together in this country in the form of a house, it would follow that the house must be said to have been wholly constructed in this country.

It may be said generally, although not universally, that a complete manufacture is either the ultimate product of prior

successive manufactures, such as a watch spring, or a penknife, or an intermediate product which may be used for different purposes, such for instance as pig iron, iron bars, lumber or cloth; while a partial manufacture is a mere stage in the development of the material toward an ultimate and predestined product, such for instance as the different parts of a watch which need only to be put together to make the finished article. If, for instance, the wheels, chain, springs, dial, hands and case of a watch were all imported from abroad, and merely put together in this country, we do not think it could be said that the watch was wholly manufactured within the United States. The same remark we think may be made with reference to the shooks in this case, which were practically worthless except for being put together for a box of a definite size.

The distinction here made was alluded to in the opinion of this court in *Worthington* v. *Robbins*, 139 U. S. 337, 341, in which the question arose whether "white hard enamel," used for various purposes, including watch dials, was dutiable as "watch materials," or as a simple manufacture. In delivering the opinion of the court Mr. Justice Blatchford said: "The article in question was, to all intents and purposes, raw material. If it were to be classed as 'watch materials,' it would follow that any metal which could ultimately be used, and was ultimately used, in the manufacture of a watch, but could be used for other purposes also, would be dutiable as 'watch materials.' In order to be 'watch materials' the article must in itself bear marks of its special adaptation for use in making watches. The fact that the article in question was used in the manufacture of watches has no relation to the condition of the article as imported, but to what afterwards the importer did with it."

It does not necessarily follow that the shooks in question were not a manufacture, and dutiable as such, or that they were dutiable as boxes, though destined to be put together as such, since in *United States* v. *Schoverling*, 146 U. S. 76, finished gunstocks with locks and mountings, unaccompanied by barrels, were held to be dutiable as manufactures of iron, and not as "guns."

Bearing in mind that the object of the drawback was partly, at least, to encourage domestic manufactures, and that all the substantial work done in this country was in nailing together the tops, bottoms and sides of these boxes, we think it clear that it cannot be said that the boxes so constructed were wholly manufactured in the United States. The work done in trimming or sawing off the ends of the boards was a mere incident to the nailing together, and was caused by the inadvertence, negligence or insufficient instructions given to the Canadian manufacturer, and was no proper part of the manufacture. While the amount of work done to constitute a new manufacture may not be great, *Saltonstall* v. *Wiebusch*, 156 U. S. 601, yet we think the fact that in the transfer of those boards to the completed boxes, the cost of labor expended in the United States represented only one tenth in value of the boxes is important, especially when taken in connection with the fact that the shooks when imported were usable only for a single purpose. It is quite improbable that Congress intended to allow a drawback upon the nine tenths represented by the Canadian material for the benefit of the one tenth represented by the labor put upon the boxes in this country. What was doubtless meant was to allow this drawback upon articles manufactured wholly and *bona fide* within the United States, either from the raw material, or from material which was the result of the last complete manufacture.

While the nails, which were used in fastening the shooks together and were made from iron rods imported from abroad, may be said to have been wholly manufactured in the United States within the principles here announced, they lost their identity as such when used in nailing the shooks together, and became so far a part of the boxes that no separate drawback could be claimed for them.

There was no error in dismissing the petition, and the judgment of the Court of Claims is therefore

Affirmed.